County of Loudoun Department of Planning

MEMORANDUM

DATE:

July 26, 2007

TO:

The Loudoun County Planning Commission

FROM:

John Merrithew, Project Manager

SUBJECT: ZMAP 2006-0016, Kincora

At the July 23, 2007 work session, the Commission received an update on the most recent changes to the application and discussed design, transportation phasing, the timing of residential development, steep slope and floodplain impacts and the alignment of Russell Branch Parkway. The meeting ended with the Commission requesting the applicant and staff to return with updates to the specific issues listed below.

The applicant has submitted additional information, including a revised proffer statement, responses to Planning Commissioners' questions and comments, and a revised Concept Plan. Various referral agencies, including the County Attorney's Office, Environmental Review and Office of Transportation Services, have not yet had an opportunity to complete the review of the revised proffer statement and Concept Plan. However, during the initial review by staff, some concerns have been noted:

- The proffered sheets of the Concept Plan need to be revised to reflect conformance with the <u>Revised 1993 Zoning Ordinance</u>. Specifically, the approximate locations of stormwater management ponds should not be depicted to impact steep slopes or major floodplain;
- 2. Roads 7, 11, and 21 of the Concept Plan should be realigned to avoid impacts to steep slopes and major floodplain; and
- 3. Staff is requesting more specific commitment to green building practices than those proposed in the revised proffer statement.

Staff and the application will speak to these issues at the July 30 meeting.

Concept Plan – the Commission asked that the mixed use concept outlined in the applicant's illustrations be translated to the proffered design standards and the applicant's and the concept plan in a manner ensuring the vertical mix of uses. The applicant will present their proposal at the July 30 meeting.

Water feature - The Commission asked that the applicant provide alternative scenarios for developing a pond system to address water quality issues and retain a water feature without impacting steep slopes. Further, the Commission asked for a better description of the size and associated activity around the project's major water feature and to compare the scale of the feature with the Loudoun Tech Center pond. Staff and the applicant have discussed alternate design arrangements throughout the review process focusing on relocating the major water feature away from the steep slopes and floodplain and will be prepared to speak to alternatives at the meeting. As requested by the Commission at the July 9th worksession, staff has provided an alternative design illustrative (Please see Attachment A and B to this memorandum.)

Workforce housing – the Commission recommended the applicant consider committing to additional workforce housing units. The current proffer provides for a maximum of 67 affordable units (ADU)

and 20 workforce housing units or if fewer ADU's are required by Ordinance, the applicant will provide a combination of 67 ADU and workforce housing units. The Commission suggested a minimum of 87 ADU or workforce units be provided.

July 5 proffer:

A. Affordable Dwelling Units.

The Owner shall provide six and one quarter percent (6.25%) of the market rate residential dwelling units, up to a maximum of 67 of the total 1,068 residential dwelling units, as affordable dwelling units (ADUs), as defined and required by the Loudoun County current provisions of Article 7 of the Zoning Ordinance. All of the ADUs shall be provided as multifamily units. The development and administration of the ADUs shall be in accordance with the applicable provisions of the Zoning Ordinance.

B. Workforce Housing.

Twenty (20) of the 1,068 residential dwelling units constructed on the Property shall be provided as ""Work Force Housing" and shall be available for purchasers whose income does not exceed 100% of Loudoun County's Median Household Income. These units shall be administered pursuant to the Affordable Dwelling Unit Provision of Article 7 of the Zoning Ordinance and in accordance with Chapter 1450 of the Loudoun County Codified Ordinances, except that the income limit for qualified purchasers shall be 100% of the Loudoun County Median Household Income.

In addition, if all or any portion of the residential component is exempt from the ADU requirement in the Zoning Ordinance such that fewer than 67 ADUs are required by Proffer I.D., the Applicant shall provide a workforce housing unit (as defined in this Proffer) for each such ADU that is not required, up to a maximum of 47 workforce housing units in addition to the 20 workforce housing units provided in this Proffer.

Residential phasing – the Commission asked the applicant to clarify the construction of residential units in Phases two and three.

July 5 proffer:

Phase	One	Two	Three
Residential (maximum)			
Additional Units	550	300	218
Cumulative Total	550	850	1,068
Office (minimum)			
Additional Floor Area		175,000	400,000
Cumulative Total		175,000	575,000

Public safety sites – the applicant is to provide assurances that a sheriff substation could locate in the development with or independent of the proffered fire and rescue site.

July 5 proffer:

C. Fire and Rescue Site.

The Owner shall dedicate and convey to the Board of Supervisors within 90 days of request a minimum of 5 buildable (i.e., non-floodplain, wetlands, very steep slopes) acres located in Land Bay Q, as identified on Sheets 9 and 10 of the Concept Plan, to be used for County fire and rescue and/or other governmental purposes, except the following: animal shelters, detention facilities, solid waste facilities, day labor centers, equipment and material storage yards and publicly owned or group residential uses. Any governmental use that requires a special exception shall be permitted with the applicable special exception approval, but without requiring a proffer or zoning concept plan amendment. The Owner will clear and rough grade the site during construction and installation of the public improvements for that portion of the development. In the event the County has not requested, in writing, dedication of this site within twenty-five (25) years of the date the Owner obtains the first zoning permit for a use on the Property, the commitment in this Proffer shall expire and such site may be used by the Owner for any use permitted in the applicable zoning district, including any permissible special exception uses for which the approval of the requisite special exception is obtained, as long as such use does not exceed the maximum floor area for non-residential uses proffered in Proffer I.B. above. The fair market value of this site and the cost of any improvements provided by the Owner shall be credited against the anticipated_proffered capital facilities contributions for this application. The value of this site will be determined by appraisal of the fair market value of the site determined at the time of dedication. The appraisal shall be paid for by the Owner and provided to the County.

School - The Commission asked for the applicant's response to an earlier proposal to include a private urban school among the uses in the village core area.

Green buildings – the applicant is asked to compare their green building proffer against the language proposed by staff.

July 5 applicant proffer:

- **D.** Green Building Practices. The Owner shall employ development attributes of the United States Green Building Council's Leadership in Energy and Environmental Design ("LEED") program into the planning of the office buildings on the Property. Those elements may include, but shall not be limited to, sustainable site design, water efficiency, energy management, waste management, materials and resource reuse, and/or indoor environmental air quality. This Proffer shall not be construed as a commitment to obtain a certain level of LEED certification. The Owner shall incorporate the following specific design features on the Property:
- **1.** Bicycle racks located throughout the Property
- **2.** Bicycle storage areas within each office building parking structure
- 3. Shower facilities located in each office building containing greater than 150,000 square feet of office space
- **4.** Convenient access to shuttle and/or bus stops

Staff proposed language:

Green Building Practices. The owner shall employ development attributes of the United States Green Building Council's Leadership in Energy and Environmental Design ("LEED") program into the planning of the office buildings on the Property.

- 1. Those elements may include, but shall not be limited to, sustainable site design, water efficiency, energy management, materials and resource reuse, and/or interior environmental quality.
- 2. The following alternative transportation-related elements will be included throughout the property:
 - a. bicycle parking areas for all office and retail buildings and sheltered areas for multi-family housing;
 - b. shower facilities for employees in all office and retail buildings; and
 - c. the siting of all office and retail buildings within one-quarter mile of a bus or shuttle stop.
- 3. While this proffer shall not be construed as a commitment to obtain a certain level of LEED certification, all office and retail design and construction will incorporate all of the "prerequisites" of LEED for New Buildings version 2.2, or LEED for Core and Shell version 2.0, or updated versions. Further, all office and retail buildings will be designed to achieve specific LEED goals, including a minimum reduction in water use of 20 percent; a minimum cost energy savings of 10.5 percent; and a minimum construction waste diversion from sanitary landfills or incinerators of 50 percent.
- 4. A third party will complete a LEED-specified commissioning process for all office and retail buildings that will optimize the interrelated functions of energy conservation, water use, and indoor air quality.

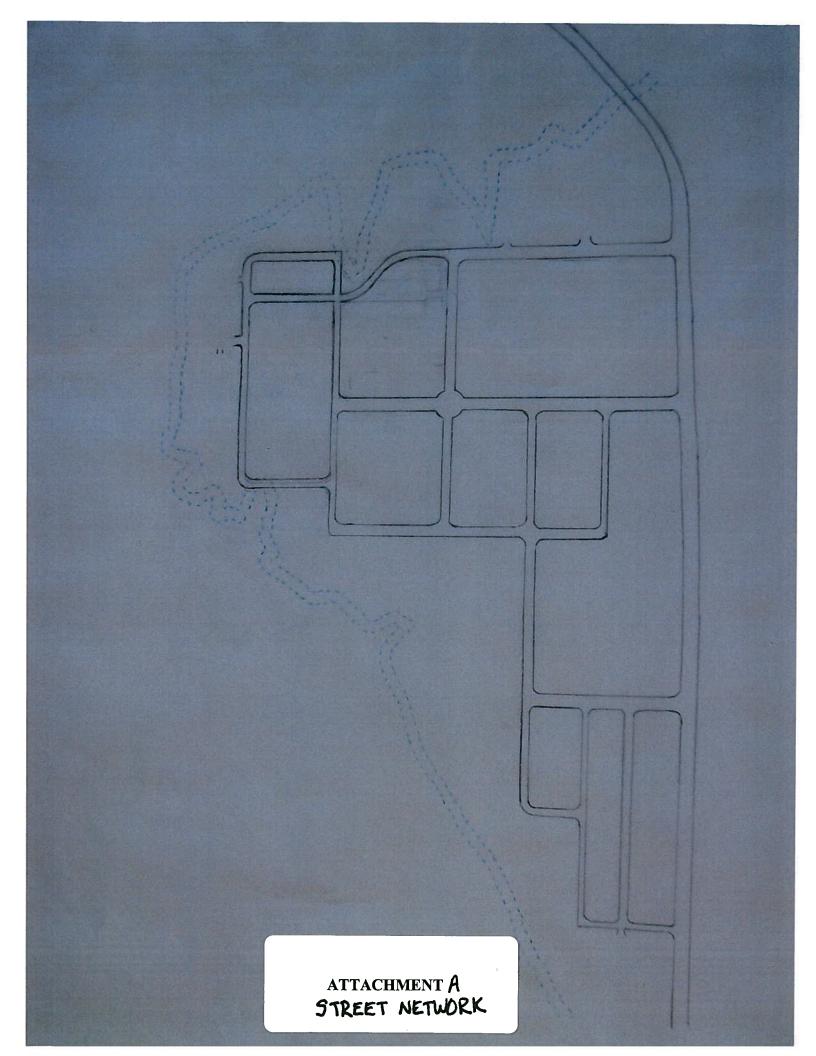
Alternative Motions

- 1. I move that the Planning Commission forward ZMAP 2006-0016, Kincora to the Board of Supervisors with a recommendation of approval contingent on the applicant committing to the construction of Gloucester Parkway from Route 28 to Loudoun County Parkway earlier in the project phasing than currently proposed in Proffer III. E. of the draft July 5, 2007 proffers and based on the following findings:
 - i. The application maintains the level of employment development intensity foreseen under the Keynote Employment policies.
 - The application provides a design concept that protects the environmental resources on the property and establishes an attractive gateway to the Route 28 corridor.
 - iii. The mixed use approach reflects a fiscal model that may facilitate development of the site and that is better able to withstand market shifts.
 - The proposed zoning modifications support a compact, pedestrian oriented lifestyle center concept.
 - v. The application incorporates significant transportation improvements, beyond those needed to mitigate their impacts, to the benefit of the regional road network.
- 2. I move that the Planning Commission forward ZMAP 2006-0016, Kincora to the Board of Supervisors with a recommendation of denial based on the following findings:
 - i. The application is not consistent with the Keynote Employment and Route 28 Highway Improvement Tax District policies.
 - ii. The application fails to mitigate transportation impacts in a timely manner.
 - iii. The application fails to mitigate capital facility impacts associated with the residential development in a manner consistent with County policy.
 - iv. The application fails to justify proposed zoning modifications and is therefore inconsistent with the Zoning Ordinance.
- 3. I move an alternate motion.

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Attachments:

- 1. Kincora Responses to Commissioners' Questions and Comments, A-1
- 2. Revised Proffer Statement, A-3
- 3. Revised Linkage Matrix, A-59
- 4. Exhibit Showing a Possible Layout for Land Bay L if Very Steep Slope Areas Remain, A-61
- 5. Comparison of Water Bodies, A-63
- 6. Zoning Modifications, A-65
- 7. Amended Deed of Open Space Easement, A-75
- 8. Benefits of Approving Kincora, A-79
- 9. Illustratives, A-81





KINCORA - Responses to Commissioners' Questions and Comments

- Proffer Statement and Concept Plan revised to incorporate all points of agreement reached with Staff and the Commission in the July 23rd meetings
- Added proffered design commitments to accomplish vertical mix of uses in the Village Area and prohibit freestanding retail on Pacific Boulevard (see Proffers I.B.1., V.E.)
- Increased potential workforce housing units to 87 (see Proffer I.E.)
- Moved 25 residential units from Phase 2 to Phase 3, for total maximum of 275 units in Phase 2 and 243 units in Phase 3 (see Proffer I.G. and attached matrix)
- Added Proffer that in the event the water feature is provided in very steep slope area of Land Bay L, specific water quality measures shall be provided to ensure integrity of water outfall to Broad Run (see Proffer II.L.)
- Revised fire and rescue Proffer to allow variety of government uses and specifically to allow sheriff substation and pet adoption facility (see Proffer VI.A.)
- Private schools are permitted by-right in the PD-TC and PD-OP districts and can be accommodated at Kincora
- The LEED Proffer has been revised in response to suggestions made by ERT Staff (see Proffer II.K.)
- Attached sketch illustrates how Land Bay L might be utilized consistent with the Proffers and Design Standards if the Applicant is not able to use the very steep slope areas
- Route 28 buy-out for residential units will be provided as required by Virginia Code (See Proffer I.C.)
- Attached exhibit illustrates how the proposed water feature compares in size with the pond at Loudoun Tech Center
- Reservation of dedication for performing arts center has been linked to first zoning permit for the Property (see Proffer I.I.)

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December 27, 2006 January 8, 2007 April 27, 2007 June 20, 2007 July 5, 2007 July 25, 2007 This page intentionally left blank.

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Pursuant to Section 15.2-2303, Code of Virginia, (1950), as amended, and Section 6-1209 of the Loudoun County Zoning Ordinance (1993), as amended (the "Zoning Ordinance"), NA Dulles Real Estate Investor LLC, a Delaware limited liability company (the "Owner"), who is the owner of Loudoun County Tax Map parcels 042-29-6582, 042-49-0209 and 041-29-8238, consisting of a total of approximately 424.3 acres of real property (the "Property"), which Property is the subject of rezoning application ZMAP 2006-0016, hereby voluntarily proffers that development of the Property shall be in substantial conformity with the proffers as set forth below (the "Proffers") and with the exhibits and zoning ordinance modifications attached hereto, all of which are incorporated herein by reference. All Proffers made herein are contingent upon the final approval by the Board of Supervisors of Loudoun County, Virginia (the "Board") of the change in the zoning districts requested in rezoning application ZMAP 2006-0016 from the PD-IP (Planned Development - Industrial Park), FOD (Floodplain Overlay District) and AI (Airport Impact) zoning districts to PD-OP (Planned Development - Office Park), PD-TC (Planned Development - Town Center), FOD (Floodplain Overlay District) and AI (Airport Impact) zoning districts. Upon final approval of the requested change in zoning districts, these Proffers shall supersede all proffers previously in effect with respect to the Property, if any. All Proffers herein shall be binding on the Owner and its successors and assigns.

I. LAND USE

A. Concept Plan.

The Property shall be developed in substantial conformity with Sheets 1, 2 and 8 - 23 of the plan attached hereto as **Exhibit A** dated January 5, 2007 as revised through July 5,25, 2007, and prepared by Urban Engineering Associates, Inc. (collectively the "Concept Plan"). The Sheets 3 - 7 and 24 - 33 are for information and illustrative purposes only. Sheets 8, 9, 10, 11 and 12 of the Concept Plan illustrate the layout proposed for development of the Property and

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indicate development limitations on the Property, such as public road rights-of-way, open space and limits of clearing and grading for uses outside of the floodplain, which shall be observed during development of the Property as more particularly described in the Proffers.

The Owner shall have reasonable flexibility to modify the location of uses and layout shown on the Concept Plan to accommodate final engineering and development ordinance requirements, provided such changes are: (i) in substantial conformity with the approved Concept Plan and the Proffers; (ii) do not increase total permitted square footage; and (iii) do not decrease the minimum amount of open space or peripheral setbacks shown to be provided on the Property. In addition, the Owner shall have reasonably flexibility to adjust the alignment of Roads 21, 11, 6 and 7 if such roads are required to be adjusted to avoid impacts to major floodplain and/or very steep slopes.

B. <u>Uses and Maximum Density/Intensity of Use.</u>

The Owner may develop the Property with any of the uses permitted in accordance with the applicable zoning districts, including any permissible special exception uses for which approval of the requisite special exception is obtained. The Property may be developed up to the following maximum densities and intensities of use:

- Up to 4,963,100 square feet of non-residential uses-(4,734,246 in the event the major floodplain area is not altered with the construction of the Route 28/Gloucester Parkway interchange)
- Up to 1,068 multi-family residential units, inclusive of any required Affordable Dwelling Units ("ADUs") and <u>the</u> workforce housing units <u>proffered herein</u> in Proffer I.E.
- 1. Retail. Not more than 464,900 square feet of the 4,963,100 square feet of nonresidential uses shall be retail sales establishments. Of the 464,900 square feet of retail use, at least 250,000 square feet shall be employment supportive retail uses, such as, but not limited to, the following examples: dry cleaners, delis, health and fitness centers, coffee shops, restaurants, convenience stores, copying/mailing facilities, office supply stores, daycare centers, drug stores/pharmacies, greeting card stores, banks, financial service organizations, gas stations, specialty retail sales establishments related to recreational uses available to the employees on site (hiking, biking and/or water related sports), retail sales establishments that are located on the first floor of a multi-story office building and similar uses that provide convenient sales and services to the employees on-site (collectively, "Employment Supportive Retail"). With the exception of (i) grocery stores, (ii) health and fitness centers, and (iii) specialty retail sales establishments containing not more than 80,000 square feet each and related to recreational uses available to the employees on-site (hiking, biking and/or water-related sports), no individual retail sales establishment shall exceed 50,000 square feet of gross floor area. No freestanding retail uses shall be located along the Pacific Boulevard frontage of the Property, except for

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the area in Land Bay N in the northwest quadrant of the Route 28/Gloucester Parkway interchange in the event the major floodplain area is altered with the construction of the interchange and it is determined by the County that the Owner may use that area for such uses. Retail uses located within multi-story office buildings that front on Pacific Boulevard, except for those in Land Bay N, shall be oriented to the west toward the Village Area. All multi-story office buildings located adjacent to Roads 5, 8, 12 (west of Road 17), 15 and 19 shall contain ground level retail.

- 2. <u>Hotel</u>. The Owner may develop one or more hotel uses as part of the 4,963,100 square feet of non-residential uses. Such hotel uses shall not exceed a total of 550,000 square feet or 720 rooms. At least one (1) of the hotels shall be a "full service hotel," with which shall mean that it will have a range of services and amenities, including restaurants a sit-down restaurant, room service, concierge services and meeting rooms. Such hotel uses shall be subject to approval of any applicable special exception requirement in the Zoning Ordinance. As long as any such special exception application is in substantial conformance with these Proffers and the Concept Plan, no Proffer or Zoning Concept Plan Amendment shall be required to locate such hotel uses on the Property.
- 3. <u>Residential</u>. All residential uses shall consist of multi-family dwelling units and shall be located in the PD-TC zoned land bays, as such land bays are identified on Sheet 13 of the Concept Plan.
- 4. <u>Floodplain Alterations</u>. To the extent the floodplain boundaries currently established for the Property are altered either (i) by construction performed by an entity that is exempt from the Zoning Ordinance (like VDOT), or (ii) pursuant to applicable provisions of the Zoning Ordinance, the Owner may utilize such areas that no longer constitute floodplain for any use permitted in the underlying zoning district, as long as the maximum nonresidential floor area and residential units committed in these Proffers are not exceeded.

C. Route 28 Prepayment of Taxes. [DISCUSS PROCESS FURTHER WITH COUNTY ATTORNEY]

The Owner shall provide prepayment of taxes that would have been attributable to the portion of the Property to be used for the multi-family residential dwelling units in accordance with the formula and provisions as adopted by the Board of Supervisors for optional residential development within the Route 28 Tax District. The prepayment of taxes shall be made within sixty (60) days after the Board of Supervisors' approval of this rezoning application (ZMAP 2006-0016). The Owner recognizes that failure to provide payment to the County in the full amount determined by the Board's formula within 60 days of the Board of Supervisors' approval of this rezoning, shall mean that this rezoning shall not become effective and that this rezoning decision shall be void in accordance with Virginia Code Section 15.2 4608(C)the time frame established by the Code of Virginia in coordination with the County Attorney.

D. <u>Affordable Dwelling Units</u>.

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The Owner shall provide six and one quarter percent (6.25%) of the market rate residential dwelling units, up to a maximum of 67 of the total 1,068 residential dwelling units, as affordable dwelling units (ADUs), as defined and required by the current provisions of Article 7 of the Zoning Ordinance. All of the ADUs shall be provided as multi-family units. The development and administration of the ADUs shall be in accordance with the applicable provisions of the Zoning Ordinance and the Loudoun County Codified Ordinances, as applicable.

E. Workforce Housing.

TwentyIn addition to the provision of the 67 ADUs required pursuant to Proffer I.D., the Owner shall provide twenty (20) of the 1,068 residential dwelling units constructed on the Property shall be provided as "Work Force Housing" and which shall be available for purchasers whose income does not exceed 100% of Loudoun County's Median Household Income. These units shall be administered pursuant to the Affordable Dwelling Unit Provision of Article 7 of the Zoning Ordinance and in accordance with Chapter 1450 of the Loudoun County Codified Ordinances, except that the income limit for qualified purchasers shall be 100% of the Loudoun County Median Household Income.

In addition, if all or any portion of the residential component is exempt from the ADU requirement in the Zoning Ordinance such that fewer than 67 ADUs are required by Proffer I.D., the Applicant shall provide a workforce housing unit (as defined in this Proffer) for each such ADU that is not required, up to a maximum of $47\underline{67}$ workforce housing units in addition to the 20 workforce housing units provided in this Proffer.

[CONCEPT RELOCATED TO DESIGN SECTION]

F. Zoning Modifications.

The Owner is requesting approval of certain modifications to the Zoning Ordinance, Land Subdivision and Development Ordinance, and the <u>Facilities Standards Manual</u> ("FSM") as identified in <u>Exhibit B.</u> <u>entitled "Zoning Ordinance ("ZO")</u>, <u>Facilities Standards Manual</u> ("FSM") and <u>Land Subdivision & Development Ordinance ("LSDO") Modifications dated</u> <u>December 27, 2006, as revised through July 25, 2007.</u> To the extent such modifications are approved, the Owner will only utilize such modifications in accordance with the statements made in justification of, and consistent with the illustrations included in, the requests for such modifications, as contained in <u>Exhibit B</u>.

G. <u>Linkage of Office and Other Non-Residential Uses to Retail and Residential</u> Development.

Consistent with the "Kincora Density and Development Phasing" tabulation provided on Sheet 13 of the Concept Plan, development of retail and residential uses on the Property shall be

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conditioned upon development of office and other non-residential uses on the Property as follows:

- 1. At least 550,000 square feet of non-residential uses shall be under construction prior to the issuance of the 551st residential zoning permit. Such 550,000 square feet of non-residential uses shall consist of (i) a maximum of 150,000 square feet of retail uses, and (ii) a minimum of 175,000 square feet of office uses located in one or more office buildings containing at least 100,000 square feet each with a minimum of four floors. Such 150,000 square feet of retail uses shall consist of a minimum of 90,000 square feet of Employment Supportive Retail.
- 2. At least 1,550,000 square feet of non-residential uses shall be under construction prior to the issuance of the 851st826th residential zoning permit. Such 1,550,000 square feet of non-residential uses shall consist of (i) a maximum of 300,000 square feet of retail uses, and (ii) a minimum of 575,000 square feet of office uses located in one or more office buildings containing at least 100,000 square feet each with a minimum of four floors. Such 300,000 square feet of retail uses shall consist of a minimum of 180,000 square feet of Employment Supportive Retail.
- 3. When occupancy permits have been issued for more than 1,550,000 square feet of non-residential uses, consistent with Proffer I.G.2. above, there shall be no further linkage limitation on the timing of retail and/or residential uses on the Property.

H. <u>Civic/Public Space</u>.

The Owner shall provide a minimum of 914,760 square feet (21 acres) of civic/public space on the Property. A minimum of 290,545 square feet (6.67 acres) of civic/public space shall be provided in the land bays zoned PD-TC. Examples of the civic/public uses that may be provided include village greens and parks, plazas, sculpture and flower gardens, picnic areas, gazebos, government offices, public meeting halls, libraries, art-galleries or museums, community club houses, community centers, post offices, day care facilities, church sites, a performing arts center, an amphitheater and the fire and rescue site identified in Land Bay Q and described in Proffer VI.A. If civic/public uses are provided in buildings, the actual floor area of the portion of the building containing such civic/public uses shall be counted toward the minimum 914,760 square feet (and 290,545 square feet within the PD-TC land bays). Prior to the approval of each record plat or site plan for development on the Property, the Owner will submit a tabulation depicting (i) the total amount of civic/public space to be provided on the Property pursuant to this Proffer, (ii) the amount of civic/public space provided with previously approved record plats and site plans, (iii) the amount of civic/public space provided with the subject record plat or site plan, and (iv) the remaining amount of civic/public space to be provided on the balance of the Property, to insure the total of 914,760 square feet (with at least 290,545 in the PD-TC land bays) will be provided. An illustration of how the civic/public space can be provided with the development of the Property is included as Sheets 32 and 33 of the Concept Plan. The Owner shall provide a village green area containing a minimum of 40,000

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square feet and a pedestrian plaza area containing a minimum of 10,000 square feet within the PD-TC portion of the Property. Both of these areas shall be counted toward the proffered minimum civic/public use space.

I. Performing Arts Center.

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The Owner shall reserve, for a period of fifteen (15) years from the date of approval of ZMAP 2006-0016; issuance of the first zoning permit for the Property, a minimum of two (2) acres generally in-the PD-TC land bays for donation to the County and/or to a non-profit entity. for the purpose of constructing a performing arts center. In the event during such fifteen (15) year period a performing arts center is approved on the Property and donations have been received and/or agreements have been executed, which will fully fund the design, engineering and construction of such performing arts center, then the Owner will donate, for no monetary compensation, such reserved parcel to the County and/or to such non-profit entity for the purpose of constructing a performing arts center. If a zoning permit is issued for a performing arts center containing a theater of at least 500 seats on property located within five (5) miles of the Property, then the Owner shall no longer be required by this Proffer to reserve a two (2) acre site for a performing arts center. If a zoning permit has not been issued final site plan application for a performing arts center on the Property has not been filed within ten (10) years of the approval of ZMAP 2006-0016, then during the remaining five (5) years of this commitment, the Owner may satisfy this Profferthe requirement to reserve two (2) acres by reserving/dedicating a two (2) acre site in the PD-OP portion of the Property, subject to any applicable special exception approval.

J. **Building Heights.**

Buildings that have frontage on Pacific Boulevard, with no intervening buildings between Pacific Boulevard and Route 28, shall be constructed to heights of a minimum of four stories. Buildings located in the Village Area (as defined in Proffer V.) in land bays A, C, D1 and D2 shall not exceed seventy-five feet (75') in height. Buildings located in the Village Area in land bays other than A, C, D1 and D2 shall not exceed one hundred twenty-five feet (125').

II. **ENVIRONMENTAL**

A. Central Water and Sanitary Sewer.

The Property shall be developed using central water and sewer facilities, which shall be provided to the Property at no cost to Loudoun County (the "County") or to the Loudoun County Sanitation Authority ("LCSA"). Water and sewer lines, pumping stations and related utility equipment shall be extended to the Property in accordance with LCSA's adopted Master Plan for provision of water and sewer service.

В. Stormwater and Water Quality.

The Property shall be developed in an effort to minimize point source and non-point source pollution by adhering to the following development standards:

- 1. Floodplain. With the exception of (i) construction of (iwithin those areas identified on the Overall Floodplain Impact Plan provided on Sheets 24-27 of the Concept Plan, and (ii) construction and installation of the following, subject to any applicable approvals of necessary alterations to the floodplain, if any: (a) roads; (b) trails; (c) passive recreational facilities; (d) community gardens; (f) stormwater management and BMP facilities, (ii; (g) on-site wetlands and stream mitigation and/or wetlands and stream mitigation banking; (h) utilities shown on the Concept Plan and appurtenant facilities, (ii) passive recreational facilities, (vii) ballfields, but only in the area south of Gloucester Parkway as identified on the Concept Plan, (viii) community gardens and (ix) on site wetlands mitigation and/or wetlands mitigation banking, no land development activities shall be located and/or maintained in the major and minor floodplain areas indicated on Sheets 8, 9, 10, 11 and 12 of the Concept Plan. Disturbances permitted within major and minor floodplain areas of the Property shall be designed to minimize the area of disturbance, retain existing vegetation to the extent possible, and shall be designed and constructed in a manner to protect water quality.
- 2. Wetlands. If not previously obtained, then concurrently with submission of each construction plans and profiles or site plan application—for, whichever occurs first, for each section of the Property, the Owner shall submit for County review the U.S. Army Corps of Engineers wetland delineation study and permit application for any wetland areas within the confines of the portion of the Property which is the subject of such construction plans and profiles or site plan application. Concurrently with the submission to the County of such study and permit application, the Owner also shall submit to the Department of Building and Development a digital copy of the wetland data for the Property to assist the County in its efforts to inventory wetlands. Wetlands may be disturbed subject to the Owner obtaining all required permits. The Owner shall endeavor to mitigate wetlands impacts associated with development of the Property on-site to the maximum extent possible. If such wetlands impacts cannot be mitigated on-site, the Owner shall mitigate such wetlands impacts elsewhere within the Broad Run watershed.
- 3. Wetlands Mitigation Banking. The Owner may use any portionthose portions of the Property identified on the Concept Plan as "Anticipated Area for Wetland Mitigation Bank" and "Proposed Possible Areas of Wetland Mitigation" for on-site wetlands and stream mitigation and/or wetlands and stream mitigation banking, subject to applicable laws, rules and regulations, and the construction of such wetlands and stream mitigation and/or wetlands and stream mitigation banking features shall be permitted in those areas even though such areas are not depicted within the limits of clearing and grading shown on the Concept Plan. In those areas identified on the Concept Plan as "Anticipated Area for Wetland Mitigation Bank," the Owner shall, subject to such areas being suitable and subject to issuance of all requisite permits and approvals, provide wetlands and stream mitigation and/or wetlands and

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stream mitigation banking within three (3) years of issuance of the first zoning permit for a use of the Property. If such areas are not suitable and/or are not permitted for wetlands and stream mitigation, such areas shall not be used for any purpose other than those uses permitted in Proffer II.B.1. above. The Owner may provide wetlands and stream mitigation and/or wetlands and stream mitigation banking in those areas identified on the Concept Plan as "Proposed Possible Areas of Wetland Mitigation," but shall not be required to do so.

- 4. Best Management Practices. The Property shall be developed in accordance with best management practices ("BMPs") which shall be defined as follows:
 - Structural and non-structural measures used in combination or as stand alone facilities, shall be provided to control runoff from developed areas of the Property in accordance with and as required by the FSM. Non-structural measures shall include site design elements that minimize the creation of new impervious area, retain native vegetation to the extent possible, and utilize storm drainage systems that replicate the pre-development hydrology to the extent practicable.
 - b. Concurrent with submission of each site plan or set of construction plans and profiles, whichever occurs first, for each section of the Property, documentation in the form of calculations, design narrative and/or other pertinent supporting information shall be provided within the proposed BMP facilities' design to illustrate that there will be a minimum fifty percent (50%) phosphorus removal rate associated with the design for developed areas of the Property, per the following guidelines:
 - The storage volume for each BMP impoundment structure shall be designed per the Loudoun County requirements stated within the FSM.
 - All BMP ponds shall be located outside of major and minor floodplain, unless approved by the applicable regulatory agencies.
 - Acceptable BMP measures, design and construction methods, and phosphorous removal efficiencies shall be based on the FSM, in place at the time of acceptance for review of the subdivisions plans, site plans and/or construction plans and profiles, supplemented by the standards of the Virginia Stormwater Management Handbook, latest edition.
 - The Owner shall explore the potential of iv. incorporating infiltration BMPs and/or other Low Impact Development ("LID") techniques at the time of each subdivision

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plan, site plan and/or construction plans and profiles and shall provide infiltration BMPs and/or <u>LIDsLID</u> for residential sections of the Property as long as they can be provided in accordance with and to satisfy the requirements of the FSM.

- v. All BMP ponds shall be designed and constructed as wet ponds or enhanced extended detention ponds.
- c. The Owner shall cooperate with the County to provide for the County assuming maintenance responsibilities for any enhanced extended detention ponds stormwater management/best management practice facilities, including, without limitation, the granting of appropriate easements, provided the Owner retains the right to maintain such facilities in the event the County fails to do so unless and until such facilities are dedicated to the County in fee simple.

C. <u>Undisturbed Natural Areas and Steep Slopes</u>.

All 100-year floodplain areas, wetland areas within or immediately adjacent to the 100-year floodplain, and areas with greater than 25 percent slope shall remain undisturbed, except for (i) if determined to be permitted under the applicable provisions of the Zoning Ordinance, those areas identified on the Overall Very Steep Slopes Impact Plan and the Overall Floodplain Impact Plan provided on Sheets 24-27 of the Concept Plan, and (ii) construction and installation of the following, subject to any applicable approvals of necessary alterations to the floodplain, if any: (a) roads; (b) trails; (c) passive recreational facilities; (d) community gardens; (e) ballfields, but only in the area south of Gloucester Parkway as depicted on the Concept Plan; (f) stormwater management and BMP facilities; (g only if approved by the applicable regulatory agencies; (f) on-site wetlands and stream mitigation and/or wetlands and stream mitigation banking; (hg) utilities shown on the Concept Plan and appurtenant facilities, and (ih) telecommunications, fiber optic cable and similar facilities.

D. Tree Preservation Areas.

Within the areas identified on Sheets 22 and 23 of the Concept Plan as "Tree Preservation Areas," the Owner shall preserve existing healthy trees provided, however, that trees may be removed to the extent necessary for the construction permitted in Proffer II.C. above and installation of the following: (a) roads; (b) trails; (c) passive recreational facilities; (d) stormwater management and BMP facilities; (e) on-site wetlands and stream mitigation and/or wetlands and stream mitigation banking; (f) utilities shown on the Concept Plan and appurtenant facilities, and (g) telecommunications, fiber optic cable and similar facilities. A minimum of eighty (80) percent of the canopy within the cumulative Tree Preservation Area depicted on the Concept Plan will be preserved, exclusive of stands of Virginia Pine over 25 years in age. In the event that the eighty (80) percent canopy threshold cannot be achieved within the designated Tree Preservation Areas, such lost canopy will be

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recaptured elsewhere onsite in locations to be designated at the discretion of the Owner in consultation with the County. Boundaries of all Tree Preservation Areas shall be delineated on the record plat recorded for each section of the development.

If, during construction on the Property, it is determined by the Owner's certified arborist and/or the County that any healthy tree located within the boundaries of any of the Tree Preservation Areas described in this Proffer has been damaged during construction and will not survive, then, prior to bond release on any section containing or immediately adjacent to a Tree Preservation Area, the Owner shall remove each such tree and replace each such tree with two (2) $2\frac{1}{2}$ - 3 inch caliper native, non-invasive deciduous trees. The placement of the replacement trees shall be proximate to the area of each such damaged tree so removed, or in another area as requested by the County.

The Owners Association documents described in Proffer VII below shall include a provision that prohibits removal of trees in Tree Preservation Areas as shown on the record plat after construction has been completed by the Owner without specific permission of the County Urban Forester except as necessary to accommodate Forest Management Techniques, performed by or recommended by a professional forester or certified arborist, that are necessary to protect or enhance the viability of the canopy. Such Management Techniques may include, without limitation, pruning and the removal of vines, invasive species, trees uprooted or damaged by extreme weather conditions, and trees or limbs that are diseased, insect-infested, dead, or are considered a hazard to life or property. The Owners Association documents shall clearly state that such provisions prohibiting tree removal shall not be amended by the Owner or the Owners Association without written approval from the County. The record plat for each portion of the Property containing a Tree Preservation Area shall contain a note stating that the removal of trees within a Tree Preservation Area is prohibited except in accordance with the Declaration of Conditions, Covenants and Restrictions recorded for the Property.

- **E.** Harvesting Trees from Cleared Areas. The Owner shall harvest trees from those areas of the Property that are forested and are to be cleared by the Owner for development of the uses on the Property. The Owner shall retain any proceeds received from the sale of the harvested forest products.
- **F.** Heron Rookery. Except for the construction, operation and maintenance of the wetlands and stream mitigation bank, no use, including the pedestrian trail system shall be located within the seven hundred (700) foot Rookery Radius shown on Sheet 16 of the Concept Plan, which shall serve as a setback from the documented location of the heron rookery identified on Sheet 16 of the Concept Plan. During the heron nesting season from March 1st to June 30th each year, no construction activity shall be performed within the area defined as the one thousand four hundred (1400) foot Rookery Radius shown on Sheet 1612 of the Concept Plan, or the 100-year floodplain boundary, whichever is less. The provisions of this Proffer II.F. shall supersede the provisions of Proffers II.B.1. and II.C.

- G. Trails Located Within the Floodplain. Trails located within the floodplain shall be constructed in coordination with the Loudoun County Department of Parks and Recreation with pervious surfaces and, where such trails cross jurisdictional waters and/or wetlands, raised boardwalks, with designs consistent with the three (3) sections provided on Sheet 15 of the Concept Plan; provided the Owner reserves the right to construct an impervious trail connection from the Village Area to the heron rookery observation platform to be constructed pursuant to Proffer IV.B. Public access easements shall be provided on all trails located within the floodplain.
- H. Open Space Easement. It is understood that, as necessary to permit the development on the Property of the uses described in these Proffers and shown on the Concept Plan, the County will cooperate with the Owner to confirm, clarify and amend, consistent with the form Amended Deed of Easement attached to this Proffer Statement as Exhibit C, the existing open space easement that was dedicated to the County pursuant to the Deed of Open Space Easement recorded in Deed Book 2314, at page 1589 among the land records in the Clerk's Office of the Circuit Court of Loudoun County, Virginia. To the extent required by the Open Space Land Act, and if necessary to allow for a release of any portion of the open space easement, the Owner will subject alternative land, acceptable to the Board of Supervisors to replace such portions of the open space easement to be released.
- I. Natural Resource Management Plan. Prior to first site plan approval or record plat approval, whichever is first in time, for the initial section of development of the Property, the Owner shall develop a Natural Resource Management Plan ("NRMP") in cooperation with the County's **Department of** Parks, Recreation and Community Services ("PRCS")-and. Environmental Review Team ("ERT")-agencies and the County Urban Forester for the purpose of maintaining the major floodplain areas located on the Property. The NRMP shall include, but not be limited to, the following elements: a) an objective; b) an assessment of existing resources; c) management recommendations; and d) an activity schedule. Once established, the NRMP shall be incorporated into the Owners Association documents to require the Owners Association to comply with the NRMP, and such provisions shall not be amended without the consent of the County. The NRMP shall be conveyed to PRCS upon dedication to Loudoun County of any portion of the Property located within the major floodplain.
- **J.** Forest Management Plan. Prior to site plan approval or record plat approval for the initial section of development of the Property, the Owner shall develop a Forest Management Plan ("FMP") for the purpose of providing maintenance for all Tree Preservation Areas depicted on the Concept Plan and subject to Proffer II.D. The FMP shall be developed in cooperation with representatives from PRCS, ERT and the County Urban Forester. Elements of the FMP shall include, but not be limited to: a) an objective; b) a resource assessment; c) management recommendations; and d) an activity schedule. Once established, the FMP shall be incorporated into the Owners Association documents to require the Owners Association to comply with the FMP, and such provisions shall not be amended without the consent of the County.

- K. Green Building Practices. The Owner shall employ development attributes of the United States Green Building Council Leadership in Energy and Environmental Design ("LEED") program into the planning of the office buildings on the Property. Those elements may include, but shall not be limited to, sustainable site design, water efficiency, energy management, waste management, materials and resource reuse, and/or indoor interior environmental air quality. This Proffer shall not be construed as a commitment to obtain a certain level of LEED certification. The Owner shall incorporate the following specific design features on quality. The following alternative transportation-related elements will be included throughout the Property:
 - 1. Bicycle racks located throughout the Property
 - 2. Bicycle storage areas within each office building parking structure
 - 3. Shower facilities located in each office building containing greater than 150,000 square feet of office space
 - 4. Convenient access to shuttle and/or bus stops
 - a. bicycle parking areas for all office and retail buildings and sheltered bicycle parking areas for multi-family housing;
 - b. shower facilities for employees in all office and retail buildings of over 100,000 square feet; and
 - c. the locating of a bus or shuttle stop within one-quarter mile of each office and retail building.

While this Proffer shall not be construed as a commitment to obtain a certain level of LEED certification, the design and construction of all office and retail buildings over 100,000 square feet will incorporate LEED elements for New Buildings identified in version 2.2, or in LEED for Core and Shell version 2.0, and will be designed to achieve LEED elements, including reduction in water use; energy savings; and construction waste diversion from sanitary landfills or incinerators, to the extent the Owner determines that the LEED elements can be incorporated without impairing the competitiveness of the Owner's buildings in the marketplace.

The Owner shall employ a LEED accredited professional in the design of each office building over 100,00 square feet.

L. Water Feature. In the event the water feature is provided in Land Bay L as illustrated on Sheet 31 of the Concept Plan, the Owner shall incorporate trash racks, inlet trash screens and/or similar devices as permitted by the FSM to separate suspended solids and trash in all storm system inlets that flow into such water feature. The Owners Association will monitor such water feature regularly to ensure proper operation of such water quality devices.

III. TRANSPORTATION

A. Road Network.

Unless otherwise specified in the Proffers, all roads required for access to and within the Property shall be constructed in accordance with the County's Land Subdivision and Development Ordinance and the FSM to provide access to the various portions of the Property as they are developed. All public roads required for access to and within the Property shall be designed and constructed in accordance with applicable Virginia Department of Transportation ("VDOT") and County standards. Except as provided in Proffer III. ED., on-site public roadways shall be constructed as development of each section of the Property that includes such roadways occurs.

Dedication of land for public roads shall include all related easements outside the right-of-way, such as slope, maintenance, storm drainage and utility relocation easements, necessary to construct the public roads shown on the Concept Plan within the Property and along the Property's existing public street frontage. Dedication of right-of-way and easements to the County for the public roads shown on the Concept Plan shall occur concurrently with development of each section of the Property. However, if requested by the County to dedicate the right-of-way and related easements in advance of development on the Property, the Owner shall make such dedication if: (1) others have prepared and obtained final approval of construction plans and profiles consistent with the Concept Plan, which require dedication to commence construction; and (2) provided that the Owner shall not be obligated to incur costs or post bonds with the County in connection with such dedication.

- B. **Pacific Boulevard Alignment**. The final alignment of Pacific Boulevard as it crosses the northeast corner of the site and Broad Run and connects to Russell Branch Parkway shall be determined at the time VDOT right-of-way plans and/or Owner-initiated construction plans and profiles are approved, and such alignment may be shifted from the alignment shown on the Concept Plan without requiring a Zoning Concept Plan Amendment or proffer amendment. If the Board of Supervisors approves the creation of a community development authority to finance construction of the off-site segment of Pacific Boulevard and VDOT and/or the County have not approved the final alignment in connection with the review and approval of the requisite plans for such segment, the community development authority mayshall, at the time required by the terms of these Proffers, deposit with the County the necessary funds for the construction of that segment of Pacific Boulevard to be held by the County and used only for the future construction of that segment of Pacific Boulevard. Any interest that accrues on such funds shall likewise be held and used only for the construction of that segment of Pacific Boulevard. Any portion of such funds or accrued interest that is not used for the construction of Pacific Boulevard, if any, shall be returned to the community development authority.
 - C. <u>Dedication of Right-of-Way for Route 28/Gloucester Parkway Interchange.</u>

Within sixty (60) days of the date of final approval of this rezoning application (ZMAP 2006-0016), the Owner shall dedicate the portion of the Property depicted on the Concept Plan as the future Route 28/Gloucester Parkway interchange area.

D. <u>Construction of Public Roads With a CDA.</u>

In the event the Board of Supervisors creates for the Property a community development authority ("CDA") pursuant to § 15.2-5152 et seq., Code of Virginia (1950), as amended, the Owner shall dedicate right-of-way, if and as necessary, and with the funding to be provided by such CDA, shall construct, bond for construction or cause to be constructed the following transportation improvements, within three (3) years of the date the CDA financing for such roads is completed or such other time as may be permitted by unless a more restrictive time frame is specified in the Ordinance creating the CDA:

- 1. Gloucester Parkway. The extension of Gloucester Parkway as shown on the Concept Plan from the planned terminus of the Route 28/Gloucester Parkway interchange project, across the Property and Broad Run, and, subject to the provision of off-site right-of-way by others, to Loudoun County Parkway. Such extension of Gloucester Parkway shall be a full section of a four (4) lane divided highway and shall include the bridge and appurtenances required to cross Broad Run with such 4-lane section—and a ten (10) foot wide bicycle trail on the north side of such extension of Gloucester Parkway. The Owner shall dedicate right-of-way on the Property for Gloucester Parkway 120 feet in width to accommodate an ultimate 6-lane divided section. The Owner shall construct the 4 lanes required by this Proffer as the outer lanes of the ultimate planned 6-lane divided road section for Gloucester Parkway.
- 2. <u>Pacific Boulevard</u>. The extension of Pacific Boulevard as shown on the Concept Plan from its current terminus at the southern Property boundary across the Property and Broad Run, and subject to provision of off-site right-of-way by others, to the current terminus of Russell Branch Parkway. Such extension to Russell Branch Parkway shall be a full section of a four (4) lane divided highway and shall include the bridge and appurtenances required to cross Broad Run with such 4-lane section <u>and a ten (10) foot wide bicycle trail on the east side of such extension of Pacific Boulevard</u>.

On or before the date that is sixty (60) days from the date of final approval of this rezoning application (ZMAP 2006-0016), the Owner shall petition the Board of Supervisors to create a CDA for the purpose of financing construction of at least the road improvements identified in this Proffer. The Owner shall include all of the Property in the petition to create such CDA. The Owner shall be permitted to coordinate the timing and implementation of construction of these public roads pursuant to this Proffer with other construction projects by others, provided such public roads are constructed or bonded for construction within three (3) years of the date the CDA financing for such roads is completed, or such other time as may be permitted by unless a more restrictive time frame is specified in the Ordinance creating the CDA. Nothing provided in this Proffer shall prevent the Owner from obtaining any land use

approvals (including, without limitation, site plan, subdivision, construction plans and profiles and grading permit) for the Property nor from commencing construction on the Property during the design and construction of these public roads. In the event the CDA is created to finance construction of the roads identified in this Proffer, the Owner shall be allowed to develop any uses permitted on the Property without regard to the provisions of Proffer III.ĐE. below, as long as (i) such uses are consistent with the linkage limitations outlined in Proffers I.G., and (ii) the Owner provides the necessary intersection improvements to connect the private streets to Pacific Boulevard as shown on the Concept Plan. In the event the necessary right-of-way for the off-site portions of Gloucester Parkway and/or Pacific Boulevard have not been dedicated to YDOT and/or the County-and/or VDOT and have not otherwise been acquired by YDOT and/or the County-and/or VDOT, within twelve (12) months of the date the CDA is created, the Owner's and/or the CDA's obligation to construct the off-site portions of the respective road for which the right-of-way is needed shall be deferred until such time as the right-of-way is acquired, and the Owner shall be permitted to pursue development of the Property notwithstanding that such portion of the road is not constructed.

E. Construction of Public Roads Without a CDA.

If the Board of Supervisors has not created a CDA for the Property to fund the transportation improvements described in Proffer III. $\underline{\mathbf{CD}}$ above, within twelve (12) months of the final approval of this rezoning application (ZMAP 2006-0016), and the Owner desires to proceed with development of the Property without CDA financing, the Owner shall construct or bond for construction transportation improvements in accordance with the following transportation construction schedule:

- 1. Transportation Improvements for Transportation Phase 1A (initial uses of the Property up to and including 300,000 square feet of non-residential uses (which may include up to 270 hotel rooms) and 300 residential dwelling units) Prior to the first record plat or site plan approval, whichever is first in time, for construction of any use on the Property, and unless already constructed or installed by others, the Owner shall construct or bond for construction the following transportation improvements:
 - a. <u>Pacific Boulevard</u>: Dedicate right-of-way for the ultimate configuration of this roadway as a four-lane divided road, and construct Pacific Boulevard from either (i) its current terminus at the southern Property boundary, or (ii) its intersection with Gloucester Parkway as shown on the Concept Plan if the Route 28/Gloucester Parkway interchange and Gloucester Parkway to the Gloucester Parkway/Pacific Boulevard intersection are constructed or bonded for construction, to a point sufficient to provide access to the portion of the Property proposed for such uses. Such portion of Pacific Boulevard shall consist of two lanes of the ultimate four-lane divided road, as such four-lane divided road is depicted on the Concept Plan and in accordance with VDOT standards, together

with deceleration, acceleration, and turn lanes and transitions to an undivided section to the south-and turn lanes as required by VDOT.

- b. <u>Bicycle Trail Pacific Boulevard</u>: To the extent not located within the public right-of-way, dedicate a fifteen (15) foot wide on-site public access easement in the setback area along the west side of Pacific Boulevard, and construct a ten (10) foot wide bicycle trail on the Property within such public access easement along the portion of Pacific Boulevard constructed pursuant to the preceding paragraph to serve the portion of the Property proposed for such use. This trail shall be located generally as shown on Sheets 15 and 16 of the Concept Plan.
- 2. <u>Transportation Improvements for Transportation Phase 1B (up to and including 1,100,000 square feet of non-residential, non-hotel uses, 270 hotel rooms and 700 residential dwelling units)</u> Prior to issuance of zoning permits for the 300,001st square foot of non-residential uses (which may include up to 270 hotel rooms) or the 301st residential dwelling unit, whichever is first in time, and unless already constructed or installed by others, the Owner shall construct or bond for construction the following transportation improvements:
 - Pacific Boulevard: Dedicate right-of-way for the ultimate configuration of this roadway as a four-lane divided road and construct Pacific Boulevard from its current terminus at the southern Property boundary across the Property, as a four-lane divided road, to the proposed intersection of Pacific Boulevard and Road 3 between Land Bays M4 and K2, or to a point further north of this intersection if such extension is necessary to provide access to the portion of the Property proposed for such uses, as such four-lane divided section is depicted on the Concept Plan and in accordance with VDOT standards, together with deceleration, acceleration and turn lanes at the intersections with the roads that provide access to the land bays along Pacific Boulevard, as required by VDOT. In addition, traffic signals shall be provided at all suchof the intersections with roads that provide access to land bays along Pacific Boulevard, if warranted by VDOT. Warrant studies shall be submitted to VDOT and the County with the submission of the construction plans and profiles for such roads that provide access to the land bays along Pacific Boulevard. If the traffic signals are not warranted at the time of the initial construction of Pacific Boulevard in Transportation Phase 1B, then the obligation to provide such signals shall be deferred to the beginning of Transportation Phase 2A, if warranted by VDOT at that time.
 - b. <u>Bicycle Trail Pacific Boulevard</u>: To the extent not located within the public right-of-way, dedicate a fifteen (15) foot wide on-site public access easement in the area along the west side of Pacific Boulevard, and construct a ten (10) foot wide bicycle trail on the Property within such public access easement

setback along the portion of Pacific Boulevard constructed pursuant to the preceding paragraph. This trail shall be located generally as shown on Sheets 15 and 16 of the Concept Plan.

- c. Gloucester/Pacific Intersection: In the event signalization is not provided by others, a traffic signal shall be installed at the Gloucester/Pacific intersection, subject to review and approval of a traffic signal warrant study submitted to VDOT. The traffic signal and intersection layout shall be designed to VDOT standards and to accommodate the ultimate four-way intersection at such time as Gloucester Parkway is extended to the west. If the traffic signal is not warranted at the time of the construction of the portion of Pacific Boulevard identified in Transportation Phase 1B, then the obligation to provide such signal shall be deferred to the beginning of Transportation Phase 2A, if warranted by VDOT at that time.
- 3. Transportation Improvements for Transportation Phase 2A (up to and including 1,700,000 square feet of non-residential, non-hotel uses, 500 hotel rooms and 1,068 residential dwelling units) Prior to issuance of zoning permits for the 1,100,001st square foot of non-residential, non-hotel uses, the 271st hotel room, or the 701st residential dwelling unit, whichever is first in time, and unless already constructed or installed by others, the Owner shall construct or bond for construction the following transportation improvements:
 - Pacific Boulevard: Dedicate right-of-way for the ultimate a. configuration of this roadway as a four-lane divided road and construct Pacific Boulevard from its current terminus at the southern Property boundary across the Property, as a four-lane divided road, to the proposed intersection of Pacific Boulevard and Road 6 between Land Bays F and B, as illustrated on the Concept Plan and in accordance with VDOT standards, together with deceleration, acceleration and turn lanes at the intersections with the roads that provide access to the land bays along Pacific Boulevard, as required by VDOT. In addition, traffic signals shall be provided at all suchof the intersections with roads that provide access to land bays along Pacific Boulevard, if warranted by VDOT. Warrant studies shall be submitted to VDOT and the County with the submission of the construction plans and profiles for such roads that provide access to the land bays along Pacific Boulevard. If the traffic signals proffered in Proffer III. DE. 2.a. are still not warranted at the beginning of Transportation Phase 2A, then the obligation to provide such signals shall be deferred to the beginning of Transportation Phase 2B if warranted by VDOT at that time.
 - b. <u>Bicycle Trail Pacific Boulevard</u>: To the extent not located within the public right-of-way, dedicate a fifteen (15) foot wide on-site public access easement in the area along the west side of Pacific Boulevard, and construct a ten (10) foot wide multi-purpose trail on the Property within such public access

easement setback along the portion of Pacific Boulevard constructed pursuant to the preceding paragraph. This trail shall be located generally as shown on Sheets 15 and 16 of the Concept Plan.

- c. Gloucester/Pacific Intersection: In the event signalization is not provided by others or in prior phases of development, a traffic signal will be installed at the Gloucester/Pacific intersection, subject to review and approval of a traffic signal warrant study submitted to VDOT. The traffic signal and intersection layout will be designed to VDOT standards and to accommodate the ultimate four-way intersection at such time as Gloucester Parkway is extended to the west. If the traffic signal is not warranted at the beginning of Transportation Phase 2A, then the obligation to provide such signal shall be deferred to the beginning of Transportation Phase 2B if warranted by VDOT at that time.
- 4. Transportation Improvements for Transportation Phase 2B (up to and including 2,400,000 square feet of non-residential, non-hotel uses, 720 hotel rooms and 1,068 residential dwelling units) Prior to issuance of zoning permits for the 1,700,001st square foot of non-residential, non-hotel uses or the 501st hotel room, whichever is first in time, and unless already constructed or installed by others, the Owner shall construct or bond for construction the following transportation improvements:
 - Pacific Boulevard: Dedicate right-of-way for the ultimate configuration of this roadway as a four-lane divided road and construct Pacific Boulevard from its then current northerly terminus across the Property as shown on the Concept Plan, with a bridge across Broad Run, and, subject to right-of-way being provided by others, connecting to the eastern terminus of Russell Branch Parkway. Such road extension shall be four-lane divided roadway and shall be constructed, as illustrated on the Concept Plan and in accordance with VDOT standards, together with deceleration, acceleration and turn lanes at the intersections with the roads that provide access to the land bays along Pacific Boulevard, as required by VDOT. In addition, traffic signals shall be provided at all such of the intersections with roads that provide access to land bays along Pacific Boulevard, if warranted by VDOT. Warrant studies shall be submitted to VDOT and the County with the submission of the construction plans and profiles for such roads that provide access to the land bays along Pacific Boulevard. If the traffic signals are not warranted at the beginning of Transportation Phase 2B, then the obligation to provide such signals shall be deferred to the beginning of Transportation Phase 3, if warranted by VDOT at that time.
 - b. <u>Bicycle Trail Pacific Boulevard</u>: To the extent not located within the public right-of-way, dedicate a fifteen (15) foot wide on-site public access easement in the setback area along the west side of Pacific Boulevard, and construct a ten (10) foot wide multi-purpose trail on the Property within such

public access easement along the portion of Pacific Boulevard constructed pursuant to the preceding paragraph. This trail shall be located generally as shown on Sheets 15 and 16 of the Concept Plan.

- c. <u>Gloucester/Pacific Intersection</u>: In the event signalization is not provided by others or in prior phases of development, a traffic signal shall be installed at the Gloucester/Pacific intersection, subject to review and approval of a traffic signal warrant study submitted to VDOT. The traffic signal and intersection layout shall be designed to VDOT standards and to accommodate the ultimate four-way intersection at such time as Gloucester Parkway is extended to the west. If the traffic signal is not warranted at the beginning of Transportation Phase 2B, then the obligation to provide such signal shall be deferred to the beginning of Transportation Phase 3 if warranted by VDOT at that time.
- 5. <u>Transportation Improvements for Transportation Phase 3 (full buildout)</u> Prior to issuance of zoning permits for the 2,400,001st square foot of non-residential uses, non-hotel uses and unless already constructed or installed by others, the Owner shall construct or bond for construction the following transportation improvements:
 - a. <u>Gloucester Parkway</u>: Dedicate right-of-way, if and as necessary, and construct an extension of Gloucester Parkway from Pacific Boulevard across the Property, with a bridge across Broad Run, as shown on the Concept Plan, and, subject to right-of-way being provided by others, and connecting to Loudoun County Parkway. Such road extensions shall be four-lane divided roadways and shall be constructed, as illustrated on the Concept Plan and in accordance with VDOT standards, together with deceleration, acceleration and turn lanes as required by VDOT.
 - <u>b.</u> <u>Bicycle Trail Gloucester Parkway: To the extent not located within the public right-of-way, dedicate a fifteen (15) foot wide on-site public access easement in the setback area along the north side of Gloucester Parkway, and construct a ten (10) foot wide multi-purpose trail within such public access easement and along the portion of Gloucester Parkway constructed pursuant to the preceding paragraph.</u>
 - <u>c.</u> <u>b. Gloucester/Pacific Intersection</u>: In the event signalization is not provided by others or in prior phases of development, a traffic signal shall be installed at this intersection, subject to review and approval of a traffic signal warrant study submitted to VDOT. The warrant study shall be submitted to VDOT and the County with the first final site plan submitted to the County for development in Transportation Phase 3.
 - F. Acquisition of Off-Site Right-of-Way/Easements.

- 1. In addition to dedicating right-of-way and easements on the Property, the Owner shall make a good faith effort to acquire off-site right-of-way or easements necessary for the construction of the off-site portions of Pacific Boulevard proffered herein. Where, despite such good faith efforts, right-of-way and/or easements necessary for construction of such off-site portion of Pacific Boulevard cannot be obtained either (i) voluntarily through donation or proffer to the County, or (ii) through purchase by the Owner at a fair market value price, the Owner shall request **VDOT** and/or the County-and/or VDOT to acquire such right-of-way and/or easements by appropriate eminent domain proceedings by **VDOT** and/or the County-and/or VDOT, with all costs associated with the eminent domain proceedings to be borne by the Owner, including but not limited to, land acquisition costs. The initiation of such eminent domain proceedings is solely within the discretion of **VDOT** and/or the County-and/or VDOT. It is understood that the County will attempt to obtain the off-site right-of-way for both the extension of Pacific Boulevard and the extension of Gloucester Parkway, as a condition of County approvals of land use applications for the properties across which such extensions will be constructed. The Owner shall not be required to pay any amounts for such right-of-way to the extent the County obtains such right-of-way as a condition of County approvals of land use applications.
- 2. If the necessary right-of-way and/or easements cannot be acquired voluntarily and the County and/or VDOT choose not to exercise the right of eminent domain within six (6) months of a written request by the Owner, the Owner shall be released from the obligation to acquire such right-of-way. If the County and/or VDOT elects to defer its exercise of eminent domain, then the Owner's Proffer requiring such acquisition or construction shall likewise be deferred.
- 3. Notwithstanding the commitments in Proffer III.<u>PE</u>. above, the Owner shall not be prevented from obtaining any land use approvals (including, without limitation, site plan, subdivision, construction plans and profiles, grading permit, zoning permit, building permit, and occupancy permit) for the Property, nor from commencing construction on the Property, during the pendency of any eminent domain proceedings initiated pursuant to this Proffer, nor any deferral of the County's and/or VDOT's exercise of eminent domain pursuant to Proffer III.<u>EF</u>.2. above.

G. Traffic Signalization.

When required by the phasing provisions set forth in the paragraphs above, the Owner shall prepare a signal warrant analysis for the installation of the traffic signals identified in each respective Transportation Phase. Pursuant to said signal warrant analysis, and if warranted by VDOT, the Owner shall design and install traffic signalization at the respective intersections when required by the schedule above. In the event a signal has not been warranted by VDOT when the Owner desires to proceed with the respective phase of development on the Property, the obligation to design and install such signal shall be deferred to the beginning of the next phase of development on the Property. In the event a signal proffered above has not been warranted at the beginning of Transportation Phase 3 of development on the Property, the Owner shall make a cash contribution to the County for the cost of the design and installation of such traffic signal. Such cash contribution shall be made prior to issuance of the first zoning permit for a use in Transportation Phase 3 of the development. The amount of the cash contribution shall be based on an estimate provided to the County by a certified engineer; however, in no case shall the contribution exceed One Hundred Sixty Thousand and 00/100 Dollars (\$160,000.00) for each traffic signal. This maximum limit on said contribution shall escalate in accordance with the Consumer Price Index ("CPI") from a base year of 2007.

H. Cash Equivalent Contribution.

Unless otherwise provided in these Proffers or unless such improvements are provided in cooperation with others by private agreement, the Owner agrees that, in the event any of the transportation improvements described above in Proffer III.DE., except the bridge crossings and off-site extensions of Gloucester Parkway and Pacific Boulevard, are constructed or bonded for construction by others prior to bonding for construction by the Owner, the Owner shall contribute to the County or its designee, for each such improvement provided by others, an amount equal to the cost of constructing such transportation improvements described above in Proffer III. DE. in lieu of actual construction of each such improvement provided by others. For the purposes of determining the in-lieu-of contribution, (i) the actual cost of the respective improvements will be used if available; if not, the value of the bond estimate will be used, and (ii) construction costs shall be deemed to include all engineering, surveying, bonding, permit fees, utility relocation, and other hard costs of construction based on paid invoices. Such contribution in lieu of actual construction shall occur at the time the Owner would otherwise have been required by these Proffers to bond or construct such improvements. As determined by the County, such contribution shall either be used to reimburse the party who constructed such improvements or for regional roadway improvements in the vicinity of and for the benefit of the Property.

I. Highway Noise Buffers.

At the time of filing of an application for each site plan approval for any residential uses on the Property, the Owner shall establish to the reasonable satisfaction of the County that no lot

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lines for residential uses proposed by such application, taking into account any noise mitigation measures provided in accordance with the <u>Revised Countywide Transportation Plan and</u> FSM, are located within the noise buffer zone along the Route 28 frontage of the Property as provided for in the <u>Revised Countywide Transportation Plan and</u> FSM.

J. Transit and Regional Road Contribution.

In addition to the above contributions, at the time of issuance of the zoning permit for each market rate residential dwelling unit constructed on the Property, the Owner shall make a one-time cash contribution to the County in the amount of Five Hundred and 00/100 Dollars (\$500.00) per market rate dwelling unit. Such contributions shall be used, in the discretion of the Board of Supervisors, to fund capital equipment for transit services that serve the Route 28 and Route 7 corridors and/or road improvements to Route 28, Route 7, Gloucester Parkway, Pacific Boulevard, Russell Branch Parkway or other regional roads (existing or planned) in the vicinity of the Property. Said contributions shall be escalated in accordance with the changes in the Consumer Price Index ("CPI") from a base year of 2007 (see Proffer VIII.D.).

K. Bus Shelters.

Within six (6) months of the date of commencement of public bus service to the Village Area, the Owner shall construct two (2) bus shelters along Pacific Boulevard. The Owner shall coordinate the location of these bus shelters with the Office of Transportation Services or other appropriate County agency. The commitment in this Proffer to construct bus shelters shall terminate twenty (20) years after issuance of the first zoning permit for any portion of the Property zoned PD-TC, if no public bus service to the Property has been established during such twenty (20) years. The bus shelters shall be maintained by the Owners Association established pursuant to Proffer VII.

L. <u>Transportation System Management Program.</u>

Prior to issuance of a zoning permit for the 500,001st square foot of non-residential uses, the Owner shall implement a Transportation System Management Program ("TSM Program") whose objective is to reduce peak hour vehicle trips to and from the site. The means to achieve this objective over the build-out period for this site may vary from time to time as knowledge is gained about specific factors and as the area and region develop. Elements of this program may, at the Owner's discretion, include but shall not necessarily be limited to any of the following:

- 1. Office parking policies: paid parking; preferential parking for high occupancy vehicles; and possible reductions in parking for certain uses
 - 2. Ridesharing: program coordinator for ride matching, van pooling.
 - 3. Flexible work schedule for on-site employers.

- 4. Transit service support.
- 5. Membership and coordination with other private and public TSM efforts or Transportation Management Associations.
 - 6. Dissemination of materials describing transit options.
- 7. Provision of bicycle parking and accessible shower facilities in buildings providing greater than 150,000 square feet of office uses.
- M. Shuttle Service. Prior to issuance of zoning permits for the 2,400,001st square foot of non-residential uses, non-hotel uses, the Owner shall provide a shuttle bus service between the uses of the Property located south of Land Bays M1, M3 and M4 and the Village Area, provided there are uses located south of Land Bays M1, M3 and M4 that generate ridership for such shuttle service.

IV. RECREATION

A. Recreation.

The Owner shall construct a bicycle and pedestrian circulation system consisting of sidewalks and trails on the Property in substantially the same location as illustrated on Sheets 15 and 16 of the Concept Plan. Sidewalks need not be constructed in locations where asphalt trails are constructed to provide the pedestrian circulation linkage depicted on Sheets 15 and 16 of the Concept Plan. Sidewalks shall be constructed on both sides of each road within the Village Area where depicted on Sheets 15 and 16 of the Concept Plan. Sidewalks and trails shall be constructed in phases concurrently with the development of land in areas adjacent to such sidewalks and trails-and, unless. Unless constructed in the public right-of-way, sidewalks shall be subject to ana public access easement of six (6) feet in width for sidewalks and eight (8) feet in width for trails, providing access to the general public in addition to residents of the Property. asphalt trails shall be subject to a public access easement of twelve (12) feet in width, and all other trails shall be subject to a public access easement of eight (8) feet in width. Trails constructed within the major floodplain west of Pacific Boulevard shall be constructed of pervious surfaces orand with raised boardwalk crossings where such trails cross jurisdictional waters and/or wetlands. Trails constructed outside of such major floodplain shall be constructed of asphalt and/or such pervious surfaces, boardwalks and raised walkways as may be permitted, in accordance with the applicable provisions of the FSM, and. Asphalt trails shall be a minimum width of ten (10) feet. All other trails shall be a minimum width of six (6) feet. Sidewalks shall be constructed of concrete, brick, concrete or brick pavers, marble or other material typically used for sidewalks in office parks and mixed-use centers, in accordance with the applicable provisions of the FSM, and shall be a minimum width of four (4) feet for private sidewalks, and, subject to VDOT approval, a minimum width of five (5) feet for public sidewalks.

- 2. As adjacent areas of the Property receive record plat approval or site plan approval, whichever is first in time, the Owner shall develop and dedicate to the Owners Association provided in Proffer VII., the SWM/BMP Ponds, the trails, civic spaces and open space areas, all as illustrated on the Concept Plan. The declaration of covenants, conditions and restrictions recorded against the Property (the "OA Covenants") shall require the establishment of maintenance procedures and sufficient funding so that the Owners Association will have the financial ability to maintain such facilities and open space areas in a decent, clean, safe and healthy condition for use by residents of the Property.
- B. Heron Rookery Observation Platform. Concurrently with construction of the trails within the floodplain area within the 1,400 foot Rookery Radius as depicted on the Concept Plan, the Owner shall construct an observation platform of not less than 400 square feet from which users of the trail can view the heron rookery. Such observation platform shall be a component of the trail system referenced in Proffer IV.B. and shall be maintained by the Owners Association, unless and until such time as the floodplain and/or the trail and observation platform are dedicated to the County. Such observation platform shall be located outside of the 700 foot Rookery Radius as depicted on the Concept Plan. The Owner reserves the right to install an impervious trail connection from the Village Area to the observation platform, notwithstanding the limitations on types of trails set forth in Proffer II.G.
- C. **Dedication of Floodplain Area and Trails**. Within six (6) months of the completion of all work associated with the construction, maintenance and permanent acceptance certification by the Army Corps of Engineers and/or the Virginia Department of Environmental Quality, of any wetlands mitigation and/or wetlands mitigation banking areas the Owner develops in the Broad Run floodplain, the Owner shall dedicate to the County the area west of Pacific Boulevard within the major floodplain for Broad Run as such major floodplain area is depicted on the Concept Plan, at no charge, for use as a natural public park. Prior to such dedication, all trails located west of Pacific Boulevard and within the major floodplain for Broad Run as depicted on the Concept Plan shall be subject to public access easements to permit use by the public and shall be maintained by the Owners Association. In the event the County desires dedication of the wetlands mitigation and/or wetlands mitigation banking areas prior to the certification by the Army Corps of Engineers and/or the Virginia Department of Environmental Quality, the Owner shall dedicate to the County such areas within six (6) months of a request by the County; provided the Owner retains ownership of all wetlands mitigation banking credits and the County assumes responsibility for maintenance of such wetlands mitigation areas until such areas are certified as completed by the Army Corps of Engineers and/or the Virginia Department of Environmental Quality.

V. DESIGN

A. Keynote Area and Village Area.

The Property shall be designed to create a Keynote Area and a Village Area. These two Areas shall have distinguishing characteristics as described in these Proffers, but shall be integrated with each other into a harmonious, unified community.

Sheets 29, 30 and 31 of the Concept Plan depict illustrative layouts of how the Owner intends to develop the Property with a Keynote Area and a Village Area. The Property shall be developed with a character and quality comparable to those illustrative layouts; provided that, subject to the specific commitments and limitations set forth in these Proffers, the Owner retains flexibility to determine the final uses, locations, sizes, orientation and footprints of the buildings and parking areas depicted on Sheets 29, 30 and 31.

- 1. <u>Keynote Area</u>. The Keynote Area shall include land bays B, F, J2, K1, K2, M1, M2, M3, M4, N and O (collectively, the "Keynote Area"). The Keynote Area shall include all areas zoned PD-TC that are located within the Town Center Core as shown on the Concept Plan. The Keynote Area shall be developed predominantly with office, hotel, and Employment Supportive Retail uses.
- 2. <u>Village Area</u>. The Village Area shall include land bays A, C, D1, D2, E1, E2, G, H, J1, and L (collectively, the "Village Area") as shown on the Concept Plan. The Village Area includes all portions of these land bays that are zoned PD-OP or are zoned PD-TC and designated on the Concept Plan as "Town Center Fringe." The Village Area does not include any areas zoned PD-TC and designated on the Concept Plan as "Town Center Core." The Village Area shall contain a mix of uses, diversity in architectural styles and a street layout generally forming a grid pattern as shown on the Concept Plan. The Village Area shall provide shared public amenities, institutional and civic uses. The Village Area shall be designed and constructed generally in accordance with the illustrations and design guidelines provided in Proffer V.

B. <u>Design Objectives for Village Area.</u>

Development of the Village Area shall be of an architectural style and quality comparable to the illustrations, <u>entitled "Kincora Village Center,"</u> dated May 2, 2006, prepared by CMSS Architects PC, and attached to this Proffer Statement as <u>Exhibit D</u>. The Village Area shall be planned and designed as a "traditional" village core in accordance with the following design criteria:

- 1. Wherever possible, buildings shall be located adjacent to the road with parking in the rear.
- 2. Buildings shall be set back a minimum of ten (10) feet from primary streets.
- 3. Building focal elements, such as towers and cupolas, shall be used as focal points.

- 4. Similar uses shall face each other across a collector or local street while different but compatible uses are placed on adjoining streets.
- 5. A continuous network of interconnected local streets with sidewalks, creating small rectilinear blocks (modified only where needed to protect environmental features) which are conducive to walking and socializing shall be required.
- 6. A hierarchy of parks, squares and greens located throughout the Village Area within easy reach of all businesses and residents and a formal civic square acting on its own or in conjunction with a civic facility or other use, to create a social focus for the community shall be required.
- 7. The location of civic uses such as parks, squares, greens and recreation amenities shall be in prominent sites to act as landmarks within the Village Area.
- 8. Off street parking lots shall be located to the rear of civic and business uses to ensure the building is the prominent sight from the street.

C. <u>Implementation of Design Objectives</u>.

- 1. <u>Design Review Committee</u>. In order to provide for the implementation of the design objectives for Kincora, the Owner shall incorporate design and architectural standards (the "Design Standards") for the Property within the documents for the Owners Association described in Proffer VII. A Design Review Committee ("DRC") shall be established in the Owners Association documents to ensure high-quality development within Kincora by reviewing all development plans for compliance with the Design Standards and the Proffers; provided, the DRC's approval authority with respect to the Proffers shall be subordinate to the authority of the County's Zoning Administrator to interpret and enforce the Proffers.
- 2. <u>Design Standards Manual</u>. The Owner shall prepare a "Kincora Design Standards Manual" (the "Design Standards Manual") to, which will describe the Design Standards and serve as a guide for the DRC and all builders and property owners in Kincora. The <u>Prior to approval of the first final site plan for a use on the Property, the</u> Owner shall submit the Design Standards Manual to the Department of Planning for review and approval as being consistent with these Proffers, prior to approval of the first final site plan for a use on the <u>Property and the Design Standards</u>. The Department of Planning shall be granted a review period of thirtysixty (3060) days, which shall not be extended unless expressly permitted by the Owner. If the Department of Planning has not made a recommendation on the Design Standards within thirtysixty days, or within the agreed upon extension, then these Design Standards shall be considered as approved by the Department of Planning. The Design Standards Manual shall be broad-based and shall address the design objectives identified in these Proffers and the Concept Plan. The specific objectives of the Design Standards Manual shall be:

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- a. To maintain and improve the quality and appearance of the living environment of Kincora.
- b. To provide uniform guidelines to be used by the DRC in reviewing applications in light of the goals set forth in the Concept Plan, Proffers and Design Standards.
- c. To illustrate basic design principles to be used by builders in residential, commercial and institutional design and construction.
- 3. <u>Design Standards</u>. The Design Standards Manual shall establish consistent quality design themes and recurring architectural elements for the Village Area to ensure a community that is internally unified and compatible with the character of the surrounding area. At a minimum, the Design Standards Manual shall include standards which address each of the following elements:
 - a. Appropriate siting of uses which respects the environmental integrity of the site;
 - b. Proper functional relationships between uses and with respect to public spaces;
 - c. Scale, mass and height of buildings;
 - d. Architectural facade treatments;
 - e. Landscaping;
 - f. Signage;
 - g. Lighting;
 - h. Street furnishings;
 - i. Screening and buffering between uses;
 - j. Treatment of utility and service areas including loading and dumpster areas;
 - k. Parking lot landscaping and screening;
 - 1. Safe and efficient pedestrian and bicycle access;
 - m. Habitat protection;

- n. Roads; and
- o. Village Area and Keynote area design.

D. <u>Boulevard Entrances to Village Area.</u>

Road 3, Road 5 and Road 6, as identified on the Concept Plan, shall be designed and constructed, with eight (8) foot landscaped medians, to provide attractive boulevard entrances to the Village Area consistent with the cross-section provided on Sheet 18 of the Concept Plan. A project identification feature comparable in size and quality to the design shown on Sheet 21 of the Concept Plan shall be provided at the entrance from Pacific Boulevard to Road 3.

- **E.** Minimum Building Heights Along Village Area Streets. The buildings that front on Road 19 and the segment of Road 8 between Road 20 and Road 21 shall be mixed-use or multi-level retail and a minimum of twenty (20) feet in height.
- F. Pedestrian-oriented Businesses. Pedestrian oriented businesses shall be provided on the ground floor level of at least 70% of all two-story buildings that front on Road 19 and the segment of Road 8 between Road 20 and Road 21.two stories. There shall be no curb cuts along the street frontages of these Road segments. There shall be no off-street parking between the buildings and these Road segments. Except to the extent necessary to accommodate pedestrian plazas and seating areas and streetscape treatment, the maximum building setback along these Road segments shall be twenty-five (25) feet.
- **E.** G.-Alleys. Site plans submitted for land bays in the PD-TC District shall depict the location of alleys that provide access to the interior of each such land bay.
- **G. H.** Demonstration of Square Footage Compliance. With the filing of each site plan, the Owner shall provide a running tabulation which presents proposed and approved square footage as follows: (i) total overall site development within Kincora; (ii) total non-residential use by category proposed and residual amount available; (iii) total <u>number of hotel rooms</u> proposed and constructed; (iv) total non-residential use versus residential use; (ivv) total amount of civic space; and (vvi) total amount of pedestrian-oriented businesses located on the ground floor of land bays within the PD-TC District. Such tabulation shall demonstrate compliance with the square footage limitations set forth in these Proffers and with the tabulation provided on Sheet 13 of the Concept Plan.
- H. Screening of Surface Parking Areas. Surface parking areas on the Property shall be screened from Pacific Boulevard with landscaping and a berm comparable in size and quality to the section Typical Pacific Boulevard Section identified on Sheet 19 of the Concept Plan. Surface parking areas shall be screened from the internal private streets with landscaping and walls and/or other hardscaping features streets cape elements comparable in size and quality to the section identified examples provided on Sheet 20 of the Concept Plan for the purpose of buffering headlight glare and other visual impacts of surface parking.

- L. J.-Structured Parking. As development of the Property proceeds and it becomes necessary to increase parking on-site beyond the surface parking areas shown on the Concept Plan, the Owner shall construct parking structures in locations generally as illustrated on Sheet 31 of the Concept Plan as necessary to provide the amount of parking required by the Zoning Ordinance. Parking structures that may be visible from public view shall be treated with individual design elements that may include, but not to be limited to, storefront appearance, false fenestration, glass, colored or stamped concrete panels, or any combination thereof, or other architectural treatment for the purpose of blending the parking structure architecture with that of surrounding buildings.
- <u>J.</u> <u>Minimum Building Facades on Roads 5 and 12. Buildings facades will front on a minimum of forty-five (45) percent of the cumulative street frontage for those sections of Roads 5 and 12 between 20 and 21.</u>

K. Comprehensive Sign Plan.

Prior to issuance of the first zoning permit for a use on the Property, a Comprehensive Sign Plan ("CSP") shall be prepared and submitted to the County for comment, with the purpose and intent of ensuring that signage is of a high quality, compatible with the architectural design of structures, reflects the character of Kincora, provides consistent, clear and attractive identification of project entrances, neighborhood entrances, public and community facilities and commercial areas, and satisfies appropriate directional and informational functions, and is consistent with the Design Standards. The CSP shall contain detailed standards on location, size, color, design and materials of signage through-out the Property, including project identification signs on Route 28. The CSP shall also provide standards for temporary signage. All signage permitted by the CSP shall comply with the requirements of the Zoning Ordinance. The CSP shall be incorporated into the Design Standards Manual for use by builders and property owners in Kincora.

L. Loading Docks/Dumpster Pads.

To the extent reasonably feasible, service and delivery loading docks and loading spaces on the Property will be oriented so as to have minimum visibility from public roads. If such loading docks and spaces are not substantially blocked from view from public roads, they shall be treated with architectural elements or decorative fencing and landscaping so as to be screened from public roads. All dumpster pads and other trash collection areas shall be enclosed on four sides by architectural elements, fencing, and/or other buffering and screening so as to minimize negative visual impacts.

M. Rooftop Mechanical Units.

Any mechanical units placed on the rooftops of buildings on the Property shall be screened by architectural features compatible with building facade architecture.

N. Streets, Streetscaping and Landscaping.

- 1. <u>Street design.</u> Streets in the Village Area will generally be designed and constructed in a rectilinear pattern of collector roads, local access roads, streets, and alleys, with streets generally terminating in other roads and streets. <u>All private streets, sidewalks and trails shall be consistent with the typical road sections provided on Sheets 17 and 18 of the Concept Plan.</u>
- 2. <u>Street trees</u>. Street trees on the Property will be planted in accordance with County criteria, and the Owner shall utilize, to the maximum extent feasible, trees that develop an overhead leaf canopy along the streets.
- 3. Private Streets. All private streets developed on the Property shall be owned and maintained by the Owners Association with appropriate covenants, restrictions and assessments. Private streets shall be subject to County review and approval at the time of applicable subdivision and site plan approvals, and shall be designed and constructed in accordance with the standards of the FSM applicable at the time such private streets are submitted to the County for approval. Private streets shall be designed to be comparable in scale to buildings to which they relate so that they contribute to the sense of a well designed village or neighborhood.
- 4. <u>Streetscape Plan</u>. The Owner shall submit a streetscape plan for each land bay, with the first subdivision or site plan, whichever is first in time, in each respective land bay. The streetscape plans will conform with County requirements, but shall include (i) all landscape buffer plans for all buffer areas and (ii) deciduous tree plantings (2 1/2" 3.0" caliper) at an average of forty (40) feet on center, with the initial subdivision plan within the respective land bays. These trees may be clustered where appropriate. Landscaping along the public streets shall be provided at the time each lot along the street is developed and may be supplemented with landscaping in addition to what is required by the Zoning Ordinance, at the Owner's option.
- 5. <u>Landscaping</u>. Individual building and parking areas on the Property shall be landscaped in a manner that is coordinated, as to plant material, with the streetscape plan along the public streets. The landscaping within the parking areas will consist, primarily, of trees which provide shade or are capable of providing shade at maturity.
- 6. <u>On-Street Parking</u>. The Owner may provide some of the off-street parking spaces required by the Zoning Ordinance as on-street parking spaces. All on-street parking spaces shall be provided in accordance with <u>the Zoning Ordinance and</u> applicable VDOT and County standards.

O. <u>Lighting</u>.

Lighting on the Property shall be designed and constructed to minimize light trespass, specifically:

1. Spillover light onto adjacent properties shall not exceed one quarter foot-candle.

- 2. All exterior light fixtures shall be "full cut-off outdoor lighting fixtures" as defined by the Illuminating Engineering Society of North America (IESNA). Light shall be directed inward and downward toward the interior of the Property, away from public streets (except street lights) and the nearby residential properties.
- 3. Except for street and parking lot lights installed in accordance with applicable provisions of the FSM, the maximum height of any freestanding exterior lighting fixtures shall be 20 feet. Height shall be measured from the ground surface to the bottom of the lighting fixture.

VI. EMERGENCY SERVICES

A. Fire and Rescue Site.

The Owner shall dedicate and convey to the Board of Supervisors within 90 days of request a minimum of 5 buildable (i.e., non-floodplain, wetlands, very steep slopes) acres located in Land Bay Q, as identified on Sheets 9 and 10 of the Concept Plan, to be used for County fire and rescue, sheriff substation and/or other governmental purposes, except the following: animal shelters (as distinguished from and not to include pet adoption centers), detention facilities, solid waste facilities (as distinguished from and not to include collection bins for drop off of pre-sorted recyclable materials), day labor centers; equipment and material storage yards and publicly owned or group living residential uses. Any governmental use that requires a special exception shall be permitted with the applicable special exception approval, but without requiring a proffer or zoning concept plan amendment. The Owner will (i) clear and rough grade the site, and (ii) extend sewer, water, telephone, natural gas and electric service to the perimeter of the site, during construction and installation of the public improvements for that portion of the development Property. In the event the County has not requested, in writing, dedication of this site within twenty-five (25) years of the date the Owner obtains the first zoning permit for a use on the Property, the commitment in this Proffer shall expire and such site may be used by the Owner for any use permitted in the applicable zoning district, including any permissible special exception uses for which the approval of the requisite special exception is obtained, as long as such use does not exceed the maximum floor area for non-residential uses proffered in Proffer I.B. above. The fair market value of this site and the cost of any improvements provided by the Owner shall be credited against the anticipated proffered capital facilities contributions for this application. The value of this site will be determined by appraisal of the fair market value of the site determined at the time of dedication. The appraisal shall be paid for by the Owner and provided to the County.

B. Owner's Contribution.

At the time of the issuance of each zoning permit, the Owner shall make a one-time contribution of Ten Cents (\$0.10) per gross square foot of non-residential floor area and Two Hundred Fifty Dollars (\$250.00) per residential dwelling unit for each residential dwelling unit, which shall be payable to the County for distribution by the County to the primary volunteer fire

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and rescue companies providing service to the Property. Such contribution shall be adjusted annually in accordance with changes to the CPI, beginning from a base year of 2007 (see Proffer VIII.D.). Contributions pursuant to this paragraph shall be divided equally between the primary servicing fire and rescue companies providing fire and rescue services to the Property. Notwithstanding the foregoing, at such time as the primary fire and rescue services to the Property are no longer provided by incorporated volunteer companies, the obligation to make the contributions listed within this paragraph shall cease, or be reduced by half if only one service is no longer provided by an incorporated volunteer company. The intent of these provisions is to support a volunteer fire and rescue system so long as it is the primary provider of fire and rescue services to the Property.

C. Sprinkler Systems.

The Owner shall require all builders to provide sprinkler systems as required by applicable building codes for each use of the Property. The Owner shall install adequate infrastructure to ensure adequate water flow and pressure for such sprinkler systems.

VII. OWNERS ASSOCIATIONS

The Owner shall establish an Owners Association for the entire Kincora community, prior to approval of the first record subdivision plat or site plan on the Property, whichever is first in time. Membership in the Owners Association shall be required of owners of all commercial lots and residential units on the Property. The Owners Association shall have among its duties trash collection and maintenance of each of the common area amenities specified herein, including, without limitation, private streets/alleys, private parking areas, stormwater management facilities, common open space and trails. Nothing herein shall preclude the Owner from establishing separate, sub-associations for any individual sections or land bays within the Property, with such sub-associations assuming responsibility for maintenance and other responsibilities within those individual sections or land bays; provided such separate, sub-associations shall not relieve the owners of units in the applicable sections of the Property from membership in the Owners Association for the entire Kincora community. Owners Association documents, which are satisfactory in form to the County, shall be approved prior to the approval of the first application for record subdivision plat or site plan, whichever is first in time, for the Property.

VIII. MISCELLANEOUS

A. Existing Wells and Drainfields.

The Owner shall abandon all existing wells and septic systems located on the Property in accordance with applicable law.

B. Type 1 Soils Survey.

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<u>July 5,25, 2007</u> Page 33

The Owner shall prepare and submit a Type 1 Soils Survey of the entire Property prior to submission to the County of the first construction plans and profiles or site plan, whichever is first in time, for any section of the Property.

C. <u>Archeological Sites</u>.

The Owner shall conduct a Phase II archeological survey of the archeological site - 44LD729 - identified on the Property. The Owner shall either mitigate, avoid or preserve buried intact this site if required by and in accordance with the applicable guidelines and regulations of the State Historic Preservation Officer. Concurrently with the submission to the County of such Phase II archeological survey, the Owner also shall submit to the Department of Building and Development a digital copy of the archeological information for the Property to assist the County in its efforts to inventory archeological sites.

D. Annual Escalation.

Whenever these Proffers refer to the escalation of a proffered contribution or value in accordance with the CPI, unless otherwise expressly stated herein, such reference shall mean that the contribution or value shall escalate annually, beginning on January 1, 2007,2008, and continuing each January 1 thereafter, by an amount equal to the percentage increase in the CPI over the prior year. If the U.S. Department of Labor shall ever cease publishing the CPI, the CPI, for purposes of these Proffers, shall be that index published by the Department of Labor or other U.S. government agency intended to reflect general increases in the cost of living for residents in the Washington, D.C. Standard Metropolitan Statistical Area.

E. Severability.

Any portion of the Property may be the subject of a proffered condition amendment, zoning concept plan amendment, rezoning, commission permit, zoning modification, special exception, variance or other zoning action without joinder and/or consent of the owners of the other land areas, provided that such application complies with the applicable Zoning Ordinance provisions. Previously approved proffered conditions or development conditions applicable to a particular portion of the Property which are not the subject of such an application shall remain in full force and effect.

F. Binding Effects.

The Owner warrants that the Owner owns all interests in the Property; that the Owner has full authority to bind the Property to these conditions; that the officer and/or manager of the Owner signing these Proffers is authorized to act on behalf of the Owner; and that these Proffers are entered into voluntarily; and that no signature from any third party is necessary for these Proffers to be binding and enforceable in accordance with their terms.

KINCORA (ZMAP 2006-0016) PROFFER STATEMENT

July 5,25, 2007

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[SIGNATURES ON FOLLOWING PAGE]

KINCORA (ZMAP 2006-0016) PROFFER STATEMENT

July 5,25, 2007

Page 35

NA DULLES REAL ESTATE INVESTOR LLC,
a Delaware limited liability company
By:
Name:
Title:
:
olic in and for the aforementioned jurisdiction,
acknowledged that he executed the foregoing
do so, as the act of such company.
fixed my hand and seal this day of
Notary Public

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EXHIBIT A CONCEPT PLAN

December 27, 2006 January 5, 2007 April 27, 2007 June 13, 2007 July 5, 2007 July 25, 2007 This page intentionally left blank.

EXHIBIT B

ZONING ORDINANCE ("ZO"), FACILITIES STANDARDS MANUAL ("FSM") AND LAND SUBDIVISION & DEVELOPMENT ORDINANCE ("LSDO") MODIFICATIONS

December 27, 2006 January 8, 2007 April 27, 2007 June 20, 2007 July 5, 2007 July 25, 2007

MODIFICATIONS

A. ZO Section 4-305(B)(2). Yards Adjacent to Agricultural and Residential Districts and Land Bays Allowing Residential Uses. No building, outdoor storage, areas for collection of refuse, or loading area shall be permitted closer than (100) feet to any agricultural district, any existing or zoned residential district, or land bay allowing residential uses. No parking shall be permitted closer than fifty (50) feet to any such area.

The PD-OP District component of Kincora will be developed with buildings no closer than ten (10) feet to any residential district or land bays allowing residential uses; parking uses will be developed with zero (0) feet minimum setbacks from any such residential area.

B. **ZO Section 4-305(B)(3). Yards Adjacent to Other Nonresidential Districts.** Fifteen (15) feet for buildings, parking, outdoor storage, and loading areas except where a greater area is required by Section 5-1400.

The PD-OP District component of Kincora will be developed with buildings, parking, outdoor storage and loading areas with zero (0) feet minimum setbacks from other nonresidential districts.

C. **ZO Section 4-305(B)(4). Yards Between Buildings.** Where individual lots or building sites are provided, the minimum required yards between buildings on adjacent lots or

building sites shall be thirty (30) feet, unless a greater yard is required by Section 5-1414(A), <u>Buffer Yard and Screening Matrix</u>.

The PD-OP District component of Kincora will be developed with buildings on adjacent lots or building sites with zero (0) feet minimum separation between each other.

D. **ZO Section 4-306(B). Building Requirements. Building Height.** Thirty five (35) feet provided that a building may be erected to a maximum height of (100) feet if it is set back from streets or from lot lines that do not constitute boundaries of districts with lower maximum height restrictions, in addition to each of the required minimum yard dimensions, a distance of not less than two (2) feet for each one (1) foot of height that it exceeds the (35) foot limit.

The PD-OP District component of Kincora will be developed with maximum building heights of 175 feet and minimum yards as permitted by other modifications.

E. **ZO Section 4-802. Size, Location and Components.** This district, when mapped shall be no less than thirty (30) acres nor more than sixty (60) acres in size, and shall be served by major collectors or arterials with capacity to handle the traffic generated. No Town Center district shall be located within 10,000 feet of another Town Center.

Kincora will be developed with a 66.75 acre PD-TC District component. The PD-TC component of Kincora will be located a minimum distance of 3,500 feet from the recently approved One Loudoun (ZMAP 2005-0008) Town Center.

F. **ZO Section 4-805(D)(1). Yards, within the Town Center Core. Front.** No minimum; 25 ft. maximum.

Kincora's PD-TC District Town Center Core will be developed with maximum front yards of 50 feet.

G. **ZO Section 4-805(D)(2). Yards, within the Town Center Core. Side.** No requirement, except 15 feet minimum for a side yard of a non-residential use abutting a lot used or planned for residential purposes.

Kincora's PD-TC District Town Center Core will be developed with zero (0) feet minimum side yards when abutting a lot used or planned for residential purposes.

H. **ZO Section 4-805(D)(3). Yards, within the Town Center Core. Rear.** No requirement, except 30 feet minimum for a rear yard of a non-residential use abutting a lot used or planned for residential purposes.

Kincora's PD-TC District Town Center Core will be developed with zero (0) feet minimum rear yards when abutting a lot used or planned for residential purposes.

- I. ZO Section 4-805(E)(2). Yards, within the Town Center Fringe. Side. No requirement, except 15 feet minimum for a side yard of a non-residential use abutting a lot used or planned for residential purposes.
 - Kincora's PD-TC District Town Center Fringe will be developed with zero (0) feet minimum side yards when abutting a lot used or planned for residential purposes.
- J. **ZO Section 4-805(E)(3). Yards, within the Town Center Fringe. Rear.** No requirement, except thirty (30) feet minimum for a rear yard of a non-residential use abutting a lot used or planned for residential purposes.
 - Kincora's PD-TC District Town Center Fringe will be developed with zero (0) feet minimum rear yards when abutting a lot used or planned for residential purposes.
- K. **ZO Section 4-805(F)(1). Other Yard Requirements. Adjacent to Roads.** No building shall be permitted closer than one hundred (100) feet to the right-of-way of any arterial or major collector road.
 - The PD-TC District component of Kincora will be developed with buildings that will be located no closer than 25 feet to the right-of-way of any arterial or major collector road and no closer than 10 feet to any private road (ingress/egress road).
- L. **ZO Section 4-805(F)(3). Other Yard Requirements. Adjacent to Other Nonresidential Districts.** Thirty five (35) for buildings, parking, outdoor storage, and loading areas, except where a greater area is required by Section 5-1400.
 - The PD-TC District component of Kincora will be developed with buildings, parking, outdoor storage and/or loading areas with zero (0) feet minimum separation when sited adjacent to other nonresidential districts.
- M. ZO Section 4-806(B). Building Requirements. Building Height. Sixty (60) feet in the Town Center Core, forty (40) feet maximum in the Town Center Fringe, except that the towers and/or steeples of civic buildings may be erected to a maximum height of 100 feet if the building is set back from public streets or from lot lines that do not constitute boundaries of districts with lower maximum height restrictions, in addition to each of the required minimum yard dimensions, a distance of not less than 2 feet for each 1 foot of height that exceeds the 35-foot limit.
 - Kincora's PD-TC District Town Center Core will be developed with maximum building heights of 175 feet and minimum yards as permitted by other modifications.
- N. **ZO Section 4-807(B). Land Assembly Requirements.** The maximum distance from one boundary of the Town Center Core to the farthest boundary shall not exceed 1,200 feet.
 - The PD-TC District component of Kincora will be developed with a maximum distance from one boundary of the Town Center Core to the farthest boundary of 1,660 feet.

O. **ZO Section 4-807(C). Land Assembly Requirements.** The maximum distance from one boundary of the entire Town Center to the farthest boundary shall not exceed 2,500 feet.

The PD-TC District component of Kincora will be developed with a maximum distance from one boundary of the entire PD-TC District to the farthest boundary of 3,490 square feet.

P. **ZO Section 4-808(B). Land Use Arrangement and Use Limitations.** The perimeter of a full block should generally range from 1,400 to 1,600 feet measured at the property (right-of-way) line.

The PD-TC District component of Kincora will be developed with blocks whose perimeter will not exceed 2,100 feet as measured at the property (right-of-way) line.

Q. **ZO Section 4-808(L). Land Use Arrangement and Use Limitations.** All off-street parking lots shall be landscaped and shall not interfere with the reasonable continuity of building facades and pedestrian activity. Within the Town Center Core, no surface parking lot space may be located closer than ten (10) feet from any street right-of-way line. Within the Town Center Fringe, no surface parking or space may be located closer than twenty five (25) feet from any street right-of-way line and district allowing residential uses.

The setback from the right-of-way shall be modified to permit the PD-TC District component of Kincora to have surface parking lots that are eight (8) feet from the right-of-way line.

R. ZO Section 5-1406(E)(2). Determination of Buffer Yard Requirements. Special Situations. If any property adjoins any existing or planned arterial road, except in the A-3, A-10, AR-1 or AR-2 district or where the Buffer Yard Type 5 is required by this Section, the required buffer yard shall be in accordance with Buffer Yard Type 3, however, such buffer yard landscaping shall be supplemented by a landscaped earthen berm at least four (4) feet in height and not to exceed a slope of 2:1. This requirement may be waived modified, and/or reduced, or the location of the required berm may be adjusted by the Zoning Administrator, where necessary to preserve existing mature trees. No buffer yard shall be required for the A-3 and A-10 districts where such property adjoins any existing or planned arterial road.

The strip of land between Pacific Boulevard and Route 28 is located on land zoned PD-OP. The north end is narrow, and the 20-foot width is not available for approximately 700 linear feet. The Owner plans to provide the same total number of trees and shrubs required for the entire buffer yard, but they will be distributed unevenly in this area.

S. ZO Section 5-1413 (A)(2). Parking Lot Landscaping and Screening Requirements. General. When non-residential parking lots, travelways, alleys, loading spaces and like uses adjoin land zoned or planned for residential use, there shall be an opaque barrier constructed to provide a separation between the two uses. This can be achieved by a

solid type fence no less than six (6) feet in height, or with densely planted shrubs and berms to provide a visual barrier. Berms shall not exceed a slope of 2:1.

The Owner proposes that no barrier be provided, as the uses are interconnected within the project and the entire project is designed to act as a cohesive, urban, walkable community. Streetscape plantings are proposed throughout the community.

Street trees will be placed to provide maximum canopy coverage and aesthetic benefit wherever possible while allowing the optimal growing conditions to allow these plants to thrive. The spacing guidelines for street tree planting will consist of two scenarios:

- 1. Where on-street parking is present street trees will be provided a maximum distance of 44' on center allowing for parked cars to be unobstructed when opening doors and to allow room for placement of items such as fire hydrants, benches, light poles and trash cans.
- 2. Where there is no on-street parking present street trees will be provided a maximum distance of 40 feet on center allowing for adequate spacing for the trees to thrive and allowing room for utility equipment, light poles and other constraints.

This minimum spacing criteria will be provided within the limits of building frontage. Building frontage is deemed as the perpendicular extension of the building envelope to the curb. Interruptions in the minimum spacing criteria may be necessary due to garage access, service entrances and bus stops. Trees will be added to the areas lying outside of the defined building frontage wherever feasible.

T. ZO Section 5-1413 (C)(2)(a) and (e). Parking Lot Landscaping and Screening Requirements. Peripheral Parking Lot Landscaping. Where the property line abuts the street right-of-way. Except where otherwise stated in this Ordinance, a landscaping strip ten (10) feet in width, exclusive of a required sidewalk or trail, shall be located between the parking lot and right-of-way line. . . . At least one (1) tree for each twenty-five (25) linear feet of land abutting any right-of-way shall be planted in the landscaping strip; however, this requirement shall not be construed as requiring the planting of trees on twenty-five (25) foot centers.

The edge of the parking lot is set 10 feet back from the face of the curb, not the right-of-way, leaving only an 8' space, which will be either landscaped with a continuous hedge, or streetscaped with benches, planter boxes and other site amenities.

U. **ZO Section 5-1414(A). Buffer Yard and Screening Matrix** – Yard required between proposed residential uses and office/retail uses within the property.

The Owner proposes no yards or plantings as the uses are interconnected within the project and the entire project is designed to act as a cohesive, urban, walkable community. Streetscape plantings are proposed throughout the community.

V. **ZO Section 5-1414(A). Buffer Yard and Screening Matrix** – Yards required between proposed uses and adjacent properties.

Where the PD-TC District boundaries abut PD-OP District areas that are adjacent to the floodplain and floodplain buffer areas, the Owner proposes to provide the required yards for PD-TC District uses on such adjacent PD-OP District property because of the close proximity of those PD-TC District uses to the floodplain and floodplain buffer, making it infeasible to provide the full yard width within the PD-TC District area without disturbing the floodplain and/or floodplain buffer areas. The Owner also proposes under Section 5-1409(B), (D) and (E) to eliminate the need to place a "buffer" in the floodplain or at a project perimeter where it would be ineffective.

.W. **ZO Section 4-1505(A)(4). Floodplain Overlay District, Permitted Uses** – Only those stormwater management improvements associated with uses permitted by right or special exception in the Floodplain Overlay District shall be permitted.

The Applicant has withdrawn this modification request.

X. **ZO Section 4-1505(A)(5). Floodplain Overlay District, Permitted Uses** – Utility lines, road crossings, private drives, serving up to seven (7) lots and private access easements are only permitted when serving low density development, and Private Lanes serving up to twenty-five (25) lots in the A-25 District as provided for in Section 2-107.

The Applicant has withdrawn this modification request.

Y. **ZO Section 5-1508(D)(1)(b). Steep Slope Standards, Permitted Uses and Activities –** Only those land disturbing activities, including but not limited to clearing, excavation, grading, construction, reconstruction, and investigative land disturbing activities such as test wells shall be permitted on any very steep slope area.

Certain land disturbing activities of Very Steep Slopes will be necessary to permit the construction of Pacific Boulevard and associated stormwater management facilities, as well as certain roads, buildings and structures as shown on the Concept Plan. The Virginia Department of Transportation will be impacting certain very steep slopes to support the construction of a stormwater management facility associated with the construction of Pacific Boulevard. The Owner will be impacting certain very steep slopes that are either isolated slopes or existing drainage conveyance systems for surface runoff from nearby roads. Impacts to Very Steep Slopes are depicted on Sheets 24 and 25 of the Concept PlanThe Applicant has withdrawn this modification request.

Z. **FSM Section 4.310(C).** General Design Requirements – Road jogs with center lines offsets of less than 225 feet shall not be allowed in public and Category A private roadways.

Private streets within Kincora will be constructed with centerline offsets of a minimum of 90 feet.

AA. **FSM Section 4.310(G). General Design Requirements** – Roadways intersecting with a public or Category A private roadway shall have a minimum length of 50 feet between curb returns and/or curb cuts.

Kincora will be constructed with private streets that will have a minimum of 0 feet between curb returns and/or curb cuts.

BB. **FSM Section 4.330(B)(2). Private Roadway Standards** – Category A roadways shall be constructed with cross section easements that are a minimum of 6 feet behind the face of curb.

Cross section easements for Category A roadways within Kincora will be constructed by the Owner with cross sections that will be a minimum of 0.5 feet behind the face of curb.

CC. **FSM Section 4.330(B)(3). Private Roadway Standards** – Category A roadways shall be designed with a minimum curve radius of 110 feet, a minimum design speed of 25 MPH for A2 - A5 roads, and a minimum sight distance requirement of 200 feet.

Kincora will be constructed with Category A roadways that will have a minimum curve radius of 50 feet, design speeds of 20 MPH, and sight distance at a minimum of 100 feet.

DD. **FSM Section 5.220(F). Hydraulic Design, General Design Criteria** – Stormwater drainage systems shall be located within drainage easements that will be dedicated to Loudoun County.

The stormwater drainage systems constructed within Kincora will be located in private easements that will dedicated to the Owner's Association who will be responsible for the continual maintenance of these systems.

EE. LSDO Section 1245.01(2). Lots and Building Area – All lots shall front on an existing or recorded public street dedicated by the subdivision plat and maintained or designed and built to be maintained by the Virginia Department of Transportation.

Kincora will be developed with lots that will front on private streets that will be constructed in accordance with applicable requirements of the FSM, unless modified according to the conditions stated in these Proffers. All of the private streets will be maintained by the Owner's Association.

JUSTIFICATION

The 424.30-acre subject property (the "Property") is situated in the southwest quadrant of the intersection of Route 7 and Route 28, with Broad Run forming the western boundary. The Property is strategically sited at the crossroads of major transportation thoroughfares, both existing and proposed. The location, size and environmental features of the Property provide an excellent location for a mixed-use development that will contribute to the current and future success of Loudoun County's vibrant business community.

Kincora has been designed to provide a variety of non-residential uses in furtherance of the Keynote Employment Center recommendations of the Revised General Plan. A large component of the site (187.45 acres) is contained within the 100-year floodplain associated with Broad Run, which provides exciting recreational opportunities along with design constraints. The construction of road improvements will provide access to the proposed development, as well as much needed regional transportation relief to Routes 7 and 28. The environmental resources and transportation improvements proposed on-site guided the development of the design for Kincora as depicted on the Concept Plan.

In order to implement the design proposed in the Concept Plan, multiple modifications of Zoning Ordinance requirements are necessary. The 424.30-acre site is proposed to be developed with a mixture of office, retail, hotel and multi-family residential uses according to the PD-OP (Planned Development-Office Park), PD-TC (Planned Development-Town Center), FOD (Floodplain Overlay District) and AI (Airport Impact) zoning districts. The Owner believes that the following Zoning Ordinance modifications will permit the development of Kincora as a vertically integrated, mixed-use development that will provide an array of business, community, environmental and transportation improvements to this section of Loudoun County. The goal of Kincora is to create a mixed-use development with a compact, urban design that will provide a level of synergy between the proposed uses that would not be possible if the site were to be developed in strict conformance with the requirements of the Zoning Ordinance.

With respect to the specific modifications requested, **subparagraphs a., b., and c.** address modifications to yard size requirements within the PD-OP District component of the development, while **subparagraphs f., g., h., i., j., k., l., m., r., s., t., u. and v.** address yard size and landscaping requirements within the PD-TC District section of the development. The building setbacks required within the PD-OP and PD-TC Districts do not permit the type of compact development envisioned by the Kincora Concept Plan. In order to provide an integrated development with strong connections between buildings, land bays and lots, these requested modifications are necessary. Streetscape improvements including pedestrian walkways and landscaping will be located along all roads throughout the development. Individual lots and land bays will be developed with a mixture of building types including non-residential and residential uses that will provide adequate pedestrian, vehicle and emergency access throughout. The reduced setbacks are necessary to permit the development of individual lots and land bays that will include a mixture of uses with attractive streetscapes, roadways and points of access.

The modifications in **subparagraphs d. and n.** will permit an increase in building height. The Concept Plan proposes to locate taller buildings adjacent to Route 28, to provide high visibility locations for office users, as is recommended within the Keynote Employment Center

recommendations of the <u>Revised General Plan</u>. The maximum building height of 175 feet will be allowed along Route 28 and building heights will taper down to the west as the site approaches Broad Run. The setback requirements will be as requested in other modifications discussed above.

The modifications in **subparagraphs o., p., q. and r.** will permit the PD-TC District land bays to be interspersed with PD-OP District land bays. This unique arrangement of land bays is reflective of the size (424.30 acres) and shape of the property. Each land bay and individual lot will be integrated into Kincora through strong pedestrian connections and a logical road network that will not alienate any of the land bays or lots.

The modification in subparagraph e. will permit the PD-TC component of Kincora to be 66.75 acres, which will be comprised of a 20 acre cohesive Core and 46.75 acres of Fringe land bays. This slight increase in the overall size of the PD-TC section of Kincora is necessary to permit the inclusion of those uses (office, retail, hotel, multi-family residential, civic and public uses) proposed by the Concept Plan. In addition, the Town Center District (PD-TC) component of Kincora will be located approximately 3,500 linear feet from the One Loudoun (ZMAP 2005-0008) Town Center District. The One Loudoun development was approved by the Loudoun County Board of Supervisors on January 16, 2007, well after the Kincora application was filed with Loudoun County. The Revised General Plan states that each Community should have a Town Center whose location should be determined by a Community Plan. Though the Sterling/Route 28 North Community does not have an established Community Plan, the Owner believes that the Kincora development is substantially different than the One Loudoun development. Further, the two Town Centers are separated by significant environmental barriers and a distance of approximately 9,500 feet by roadway. Therefore the Owner believes there should be no concern that the Town Centers would blend together creating a "super-regional" Town Center.

Subparagraph y. will permit impacts to certain Very Steep Slopes. Sheets 24 and 25 of the Concept Plan depict impacts to Very Steep Slopes that include impacts to isolated areas with slopes greater than 25%, as well as those located adjacent to the 100-year floodplain. The most significant impact to Very Steep Slopes occurs in Land Bay L, which is a disturbance that will be conducted by VDOT in association with the construction of Pacific Boulevard, which is a road improvement that is imperative to the development of Kincora and is depicted on the Countywide Transportation Plan. The current proposal by VDOT is to create a stormwater management facility in the general location of the stormwater management facility proposed by the Concept Plan within Land Bay L. Field visits to the sight have confirmed that the majority of those Very Steep Slopes shown on the Concept Plan are little more than drainage swales that convey stormwater runoff from points off-site to the Broad Run floodplain. The Owner proposes these impacts to environmental resources whose impacts will be sufficiently compensated by the amount of floodplain being preserved onsite and the stormwater management system to be constructed on-site that will provide greater protection to the Broad Run floodplain than current conditions afford.

Certain modifications of private street requirements of the Facilities Standards Manual ("FSM") and the Land Subdivision and Development Ordinance ("LSDO") are necessary in order to permit the road network proposed by the Concept Plan. The modifications in **subparagraphs z.**,

aa., bb., cc. and ee. will permit a street grid that is necessary to support the type of traditional village environment proposed by the Concept Plan. The design of the private street network as proposed by the Concept Plan, is imperative to allow the type of road system that will provide a pedestrian friendly atmosphere with street trees, multiple curb cuts, shorter curve radii and slower speeds on roads. Though the FSM and LSDO do not currently permit this type of street system absent the requested modifications the street network proposed by the Concept Plan will function adequately. In addition, all of the private streets, as well as the stormwater drainage systems addressed in the modification in subparagraph dd. will be dedicated to the Owner's Association who will be responsible for the perpetual maintenance of these systems.

EXHIBIT C AMENDED DEED OF EASEMENT

June 20, 2007

EXHIBIT D DESIGN ILLUSTRATIVES

December 27, May 2, 2006

Document comparison done by DeltaView on Thursday, July 26, 2007 10:12:47 AM

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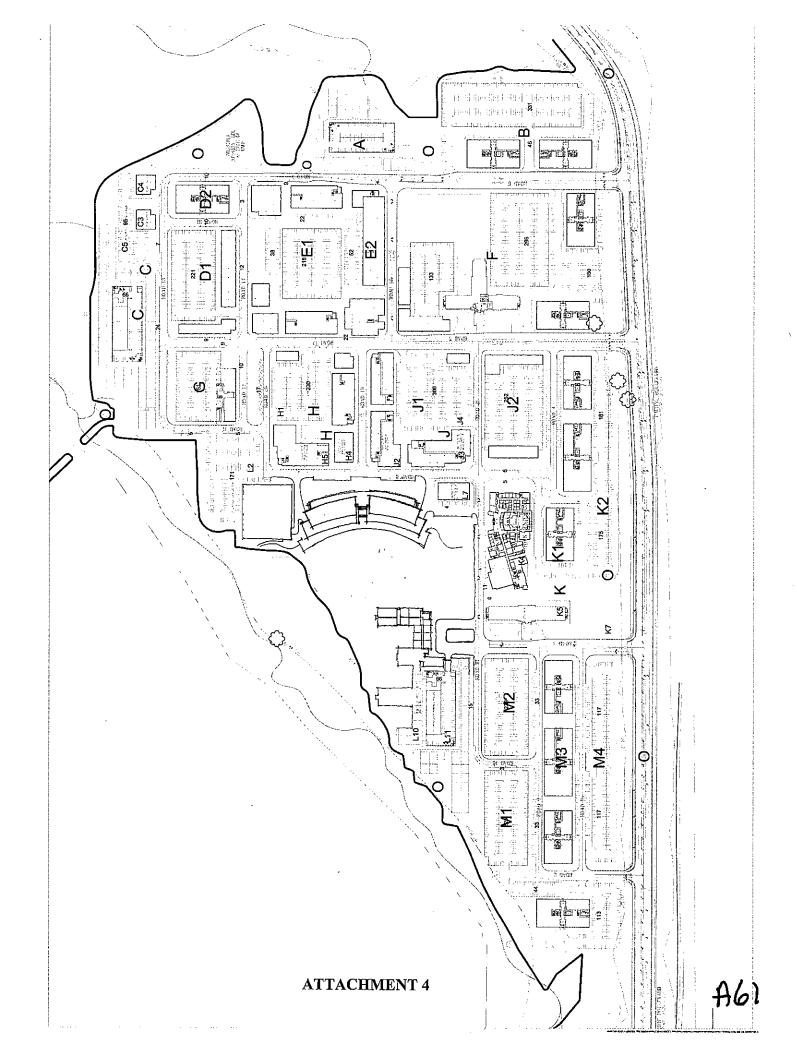


LINKAGE OF NON-RESIDENTIAL USES TO RESIDENTIAL DEVELOPMENT

Linkage Phase	Non-Residential (minimum square feet) ¹	Keynote Office (minimum square feet) ²	Retail (maximum square feet)	Multi-Family Residential (Maximum Dwelling Units
A	550,000	175,000	150,000 90,000 (Employment Supportive)	550
В	1,550,000	575,000	300,000 180,000 (Employment Supportive)	825
\mathbb{C}^3				

- 1 Inclusive of 550,000 square feet (720 rooms) of hotel use that may be constructed in any phase
- 2 Located within one or more office buildings containing greater than 100,000 square feet of office uses
- 3 After occupancy permits are issued for greater than 1,550,000 square feet of non-residential uses, there shall be no further linkage requirement

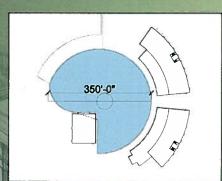
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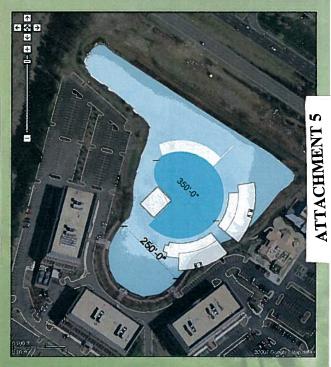
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WATERBODY AT SWEETWATERTAVERN, STERLING VA

PROPOSED WATERBODY AT KINCORA, PARCEL L



COMPARISON OF WATERBODIES



KINCORA"

Loudoun County, Virginia

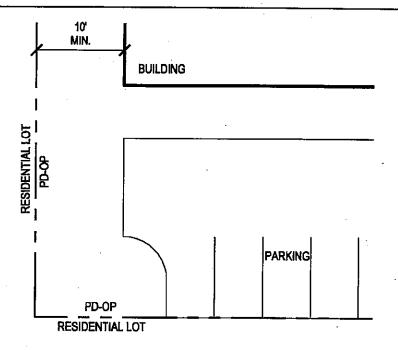
COMPARISON OF WATERBODIES

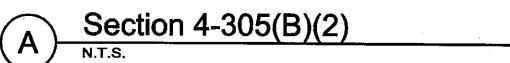
The Crossroads of Commerce and Knowledge

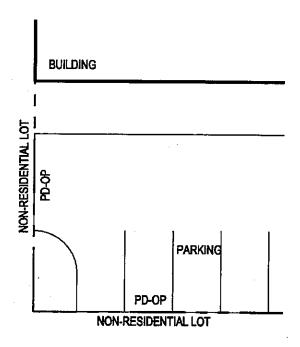


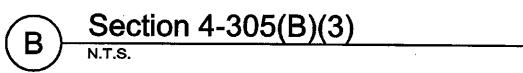
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ZONING MODIFICATIONS

KINCORA VILLAGE

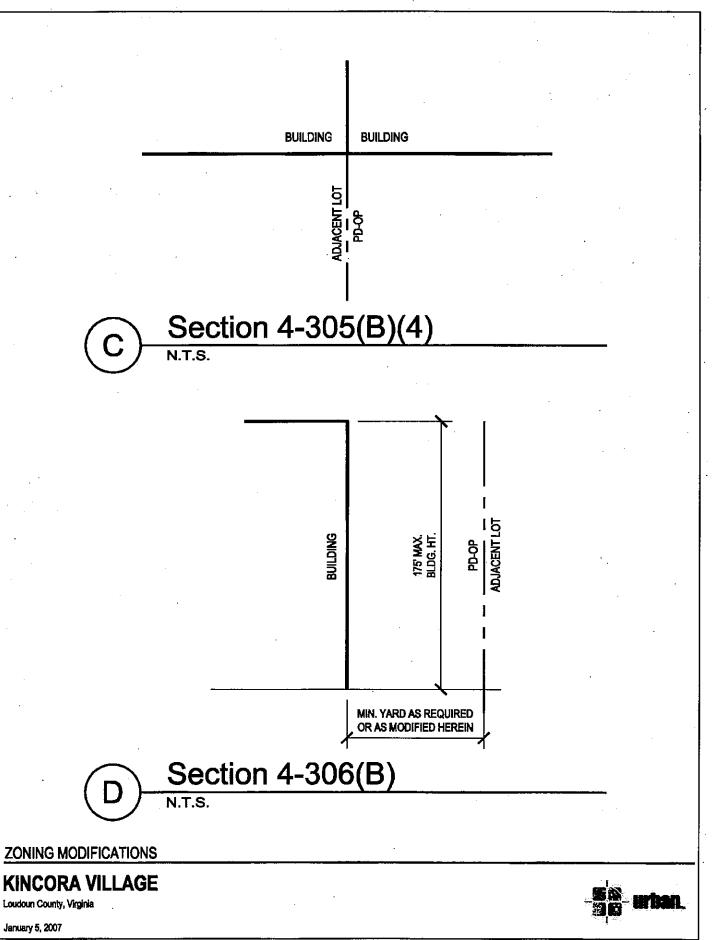
Loudoun County, Virginia

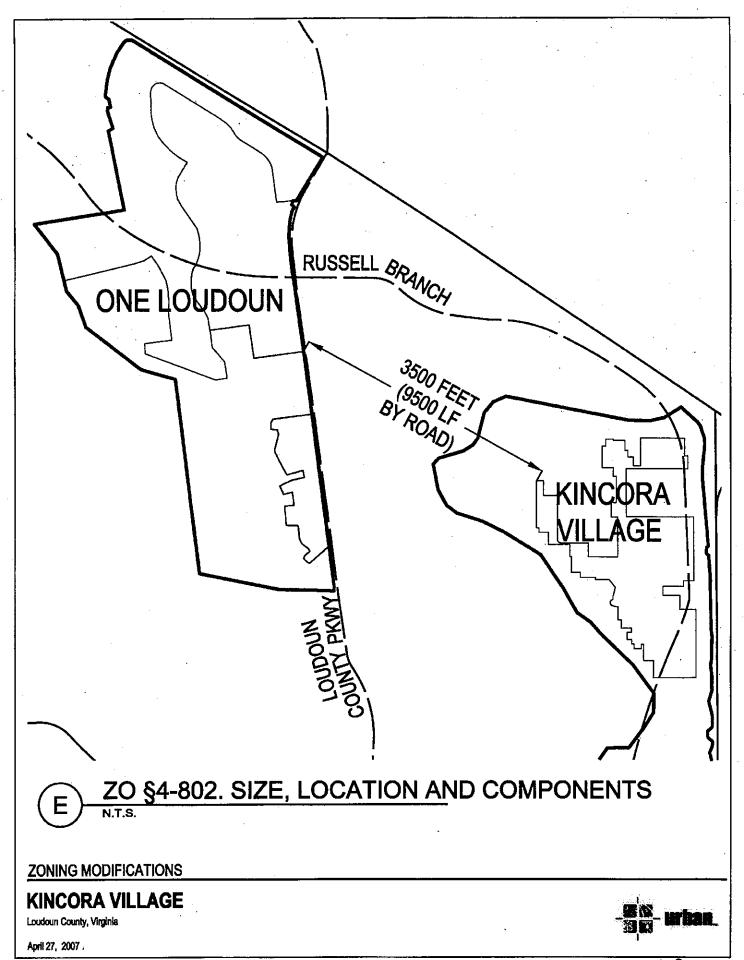
January 5, 2007

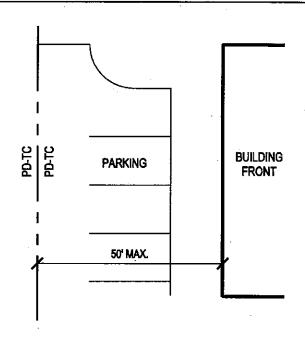
ATTACHMENT 6

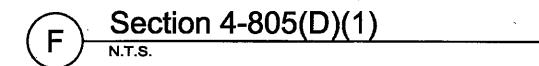


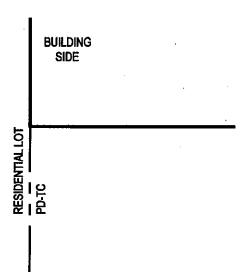
A65











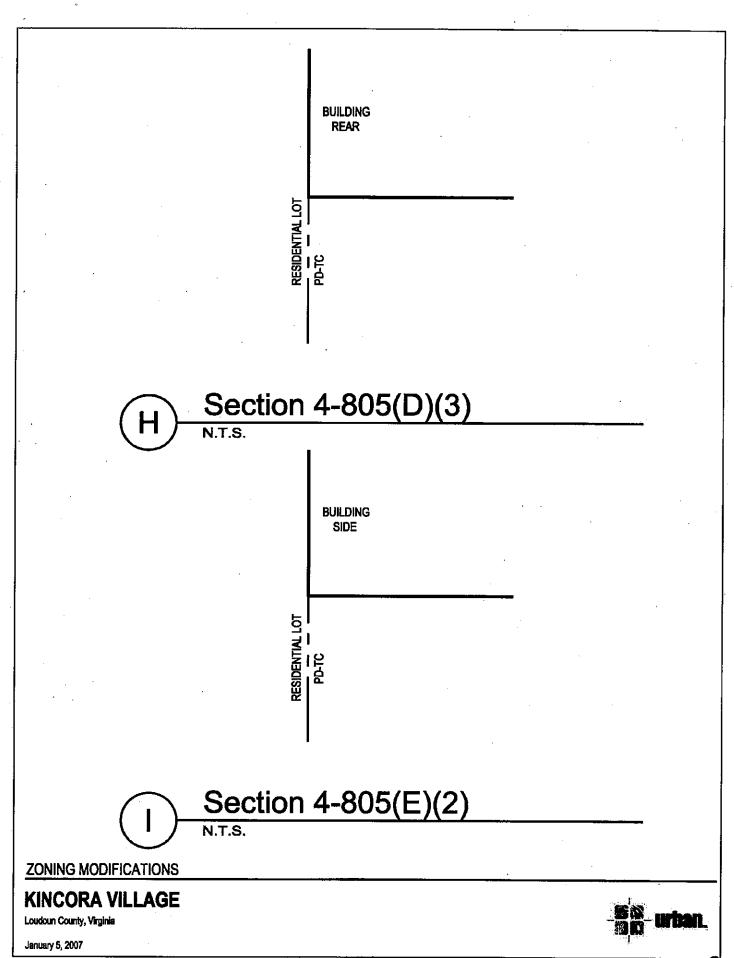
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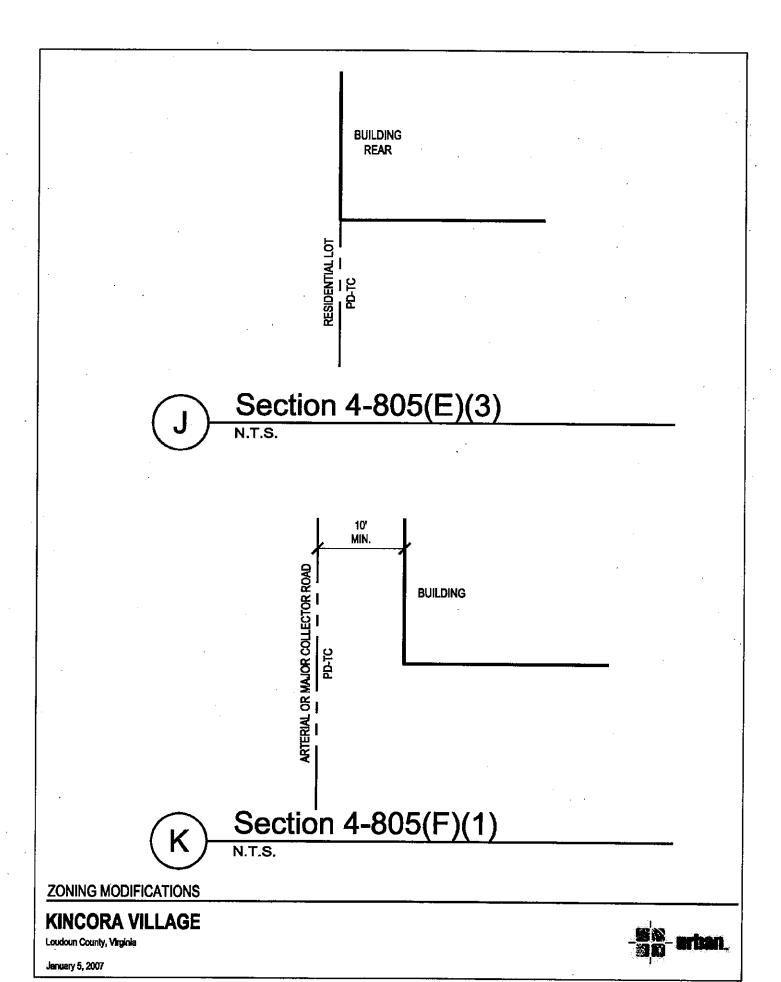
ZONING MODIFICATIONS

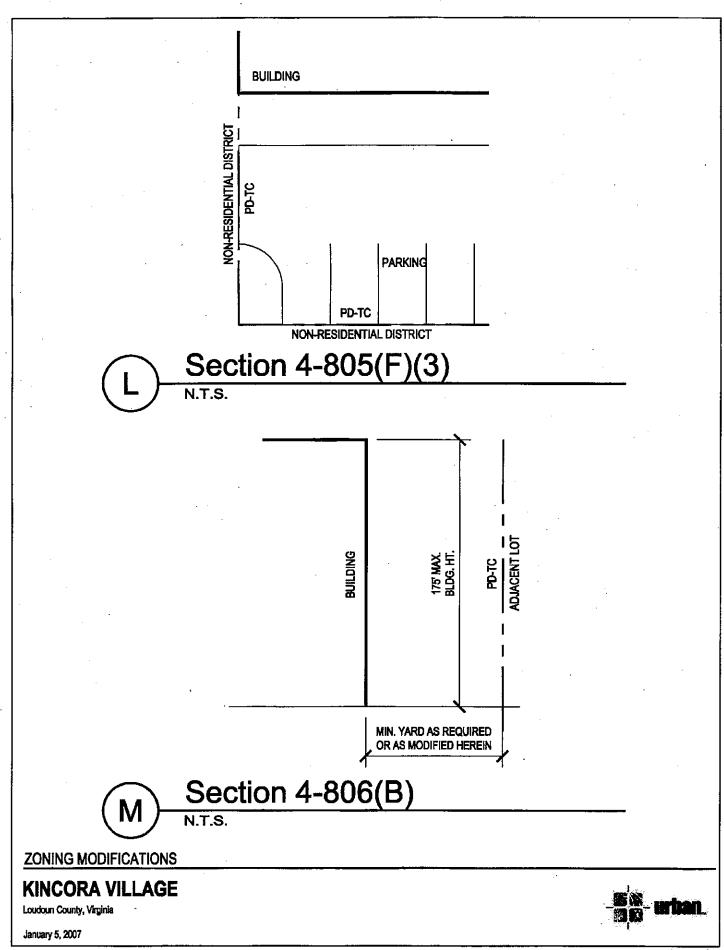
KINCORA VILLAGE

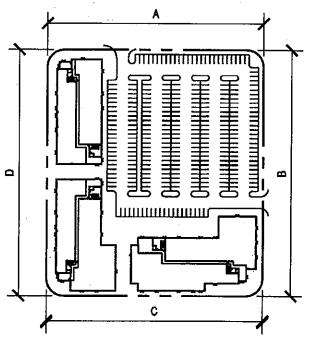
Loudoun County, Virginia





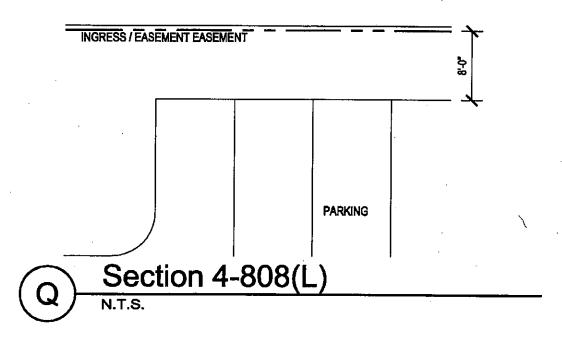






 $A + B + C + D \le 2,100 L.F.$

P Section 4-808(B)

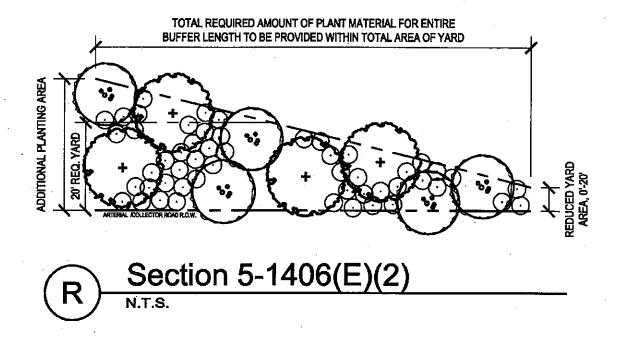


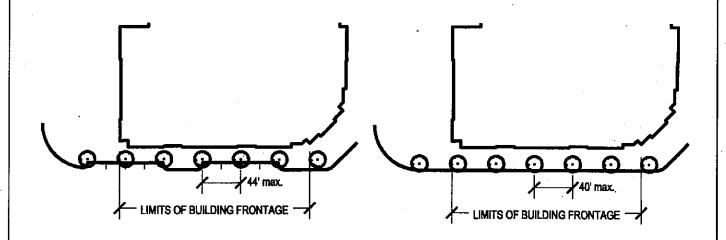
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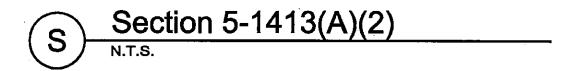
KINCORA VILLAGE

Loudoun County, Virginia







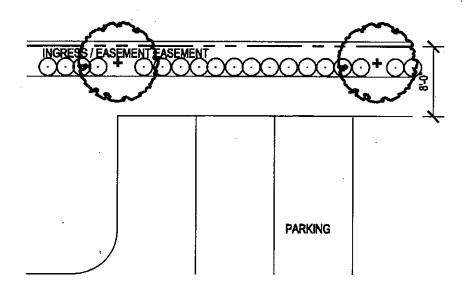


ZONING MODIFICATIONS

KINCORA VILLAGE

Loudour County, Virginia





T Section 5-1413(C)(2)(a) and (e)

ZONING MODIFICATIONS

KINCORA VILLAGE

Loudoun County, Virginia



Document prepared by and after recording return to:

Hunton & Williams LLP 1751 Pinnacle Drive, Suite 1700 McLean, Virginia 22102 Attn: John C. McGranahan, Jr., Esquire

Tax Map Parcel: 042-49-0209

AMENDED DEED OF OPEN SPACE EASEMENT

THIS AMENDED DEED OF OPEN SPACE EASEMENT (this "Amendment"), dated as of _______, 2007, by and between NA DULLES REAL ESTATE INVESTOR LLC, a Delaware limited liability company (the "Owner"), as grantor and grantee for indexing purposes, and BOARD OF SUPERVISORS OF LOUDOUN COUNTY, VIRGINIA, a body corporate and politic (the "Board"), as grantor and grantee for indexing purposes, recites and provides:

RECITALS

The Owner is the owner of that certain property in the Broad Run Election District of Loudoun County, Virginia described as Lot 2 of the Beco-Ray property (the "Property"), as such land is described in the deed recorded as Instrument #200509160104823 among the land records in the Clerk's Office of the Circuit Court of Loudoun County, Virginia (the "Land Records").

A portion of the Property currently is encumbered by an open space easement running to the benefit of the Board (the "Existing Easement"), which easement is recorded in Deed Book 2314, at page 1589 among the Land Records.

The Owner and the Board desire and intend to amend the Existing Easement for the purpose of clarifying and confirming certain uses that are expressly permitted on the portion of the Property encumbered by the Existing Easement.

AMENDMENT:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. <u>Amendment of Existing Easement</u>. Numbered paragraphs 10 and 11 of the Existing Easement are expressly amended and restated in their entirety as follows:
 - 10. The property subject to this easement (the Open Space Property) shall not be further subdivided, except in connection with and to the extent necessary for, the dedication of public street right-of-way for Gloucester Parkway and Pacific Boulevard along alignments consistent with the Countywide Transportation Plan.
 - 11. Notwithstanding any of the foregoing provisions, the Grantor expressly reserves to itself, its successors and assigns the right to:

- (a) Continue the agricultural, forestry and naturalistic uses of the Open Space Property.
- (b) Continue to hunt, fish or trap on the Open Space Property subject to relevant laws.
- (c) Improve, repair, restore, alter, remodel or replace the existing and the permitted structures with structures of similar size and purpose provided that the changes are compatible with the conservation purposes of the Open Space Property and all other provisions of this Easement.
- (d) Continue the use of the Open space Property for all purposes not inconsistent with this Easement which use shall expressly include, but not be limited to (i) the location, construction, maintenance and repair of existing and future utility lines and appurtenant facilities constructed pursuant to all necessary County approvals and related utility easements and shall include, (ii) use of the Open Space Property for wetlands mitigation, wetlands restoration and creation, stream restoration, and wetlands and stream mitigation banking purposes: (iii) construction of Gloucester Parkway and Pacific Boulevard along alignments consistent with the Countywide Transportation Plan; (iii) ballfields subject to prior approval by the Loudoun County Department of Parks and Recreation and Community Services: and (iv) the location, construction, maintenance and repair of stormwater management and/or best management practices facilities.

Except as specifically and expressly modified by this Amendment, the terms and conditions of the Existing Easements shall remain in full force and effect.

- 2. <u>Covenants Run with the Land</u>. This Amendment and the Existing Easement establish obligations which constitute real covenants which shall run with the land and be binding on the Owner and its administrators, executors, assigns, heirs and any other successors in title or interest.
- 3. <u>Counterparts</u>. This Amendment may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one and the same instrument binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

SIGNATURE PAGE AMENDMENT TO EASEMENT AGREEMENT

WITNESS the following signature and seal:

	<u>OWNER</u> :
	NA DULLES REAL ESTATE INVESTOR LLC, Delware limited liability company
	By:
STATE OF	
The foregoing instrument was ackn day of, 200, by	owledged before me in the above jurisdiction this as Estate Investor LLC, a Delaware limited liability
of NA Dulles Real company, on behalf of the company.	Estate Investor LLC, a Delaware limited liability
	Notary Public
My Commission Expires:	
[Sign	natures continue.]

a

SIGNATURE PAGE AMENDMENT TO EASEMENT AGREEMENT

WITNESS the following signature and seal:

	BOARD:	
		ISORS OF LOUDOUN A, a public body corporate
	By:	(SEAL)
	Name:	
	Title:	
COMMONWEALTH OF VIRGINIA COUNTY OF LOUDOUN, to wit: The foregoing instrument was acknowledged as a construment was a construment was a construment was a construment was a cons	owledged before me in th	e above jurisdiction this
day of, 200 by of the Board of Supervisors of Loudoun Co behalf of the Board.	unty, Virginia, a public b	ody corporate and politic, on
	Notary F	Public
My commission expires:	-	



Benefits of Approving Kincora

The County's approval of the Kincora rezoning project offers numerous benefits to the local community:

Land Use and Design Benefits

- Keynote Employment Center
- Greater Keynote Employment Uses than Permitted By-Right and Greater Opportunities for Keynote Employment Uses to Locate in the Route 28 Corridor Sooner
- Unified Development Theme With Design Standards
- Pedestrian Friendly Village
- Tall Keynote Office Buildings Fronting Route 28
- Enhanced Streetscape with Attractive Boulevard Entrances
- ADUs and Workforce Housing
- Multi-family Residential Achieves Mixed Use Objectives of COG's Regional Activity Center Designation for the Site

Transportation Benefits

- \$13.5 Million Right-of-Way for Route 28/Nokes Boulevard Interchange
- \$33 Million Gloucester Parkway Extension Across Broad Run
- \$11 Million Pacific Boulevard Extension Across Broad Run
- Transit Funding Contributions
- Transportation System Management Program
- Route 28 Tax District Residential Buyout and Non-Residential Participant

Economic Benefits

- \$202 Million Net Fiscal Benefit to the County
- \$17 Million Increase in Tax Revenue for the Route 28 Tax District
- Approx. 5,500 More Jobs than By-Right Use
- Accelerated Development Schedule

Recreation/Civic Benefits

- · Fire and Rescue Site
- 167 Acre Natural Park w/ Public Access and Eventual Public Ownership
- Performing Arts Center Site
- Bicycle and Walking Trails
- Heron Rookery Observation Platform
- 21 Acres for Civic/Public Uses

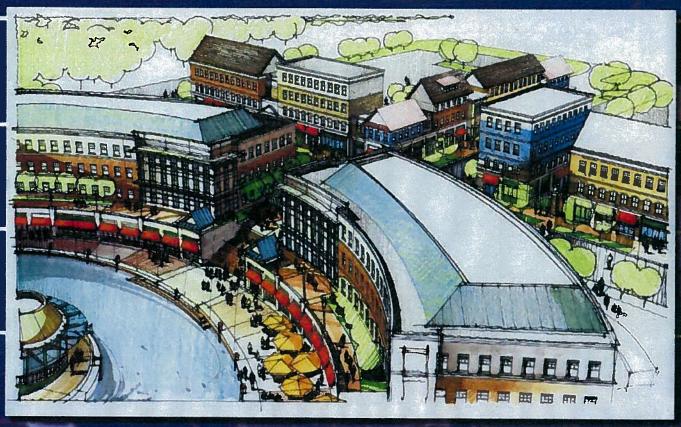
Environmental Benefits

- Permanent Preservation of 167 Acres of Broad Run Floodplain
- On-Site Wetlands and Stream Mitigation and Mitigation Banking
- Expanded Preservation and Protection of Existing Tree Preservation Areas
- Heron Rookery
- Natural Resource Management Plan
- Forest Management Plan
- Green Building Practices
- Stormwater Management/BMP Facilities Including LID Techniques

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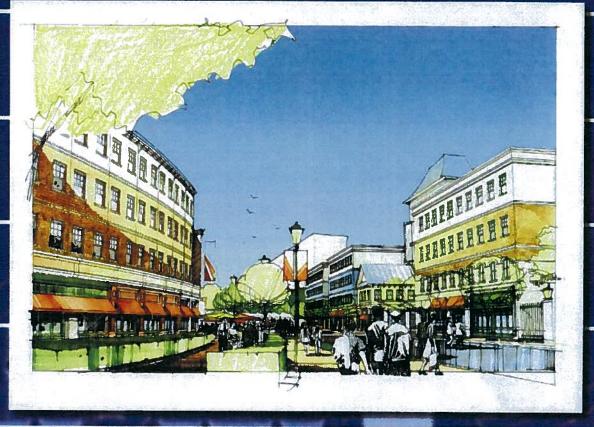


CMSS





KINCORA Village Center





KINCORA Village Center

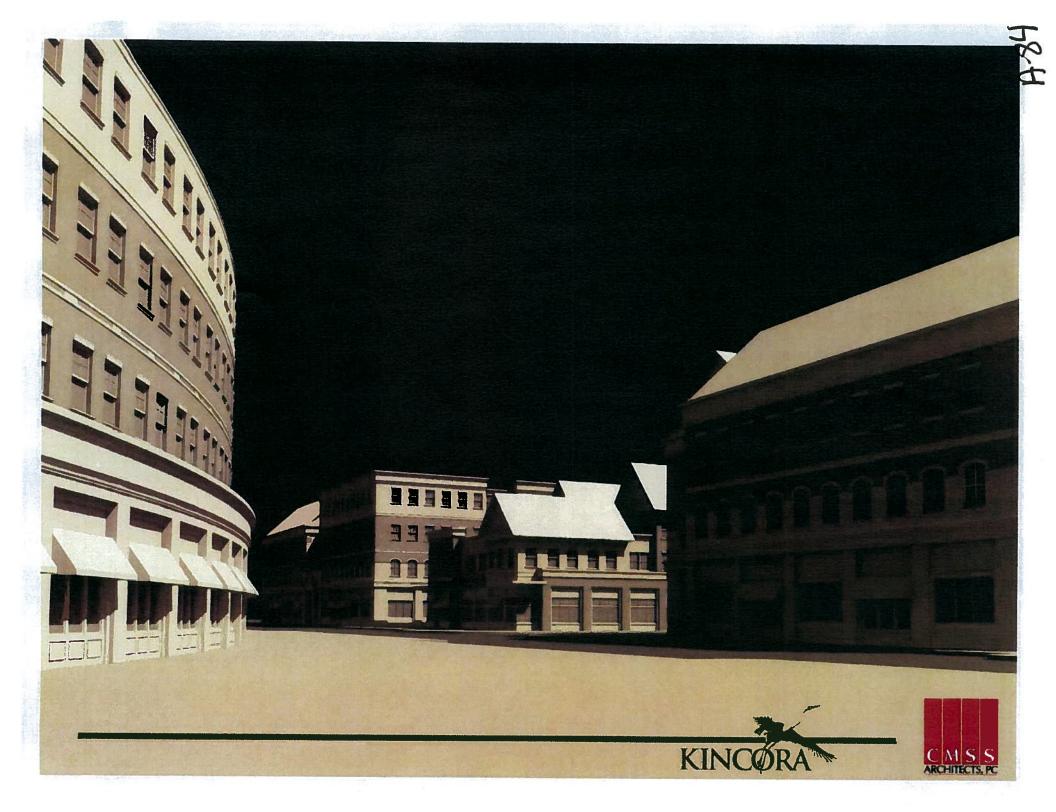
CMSS



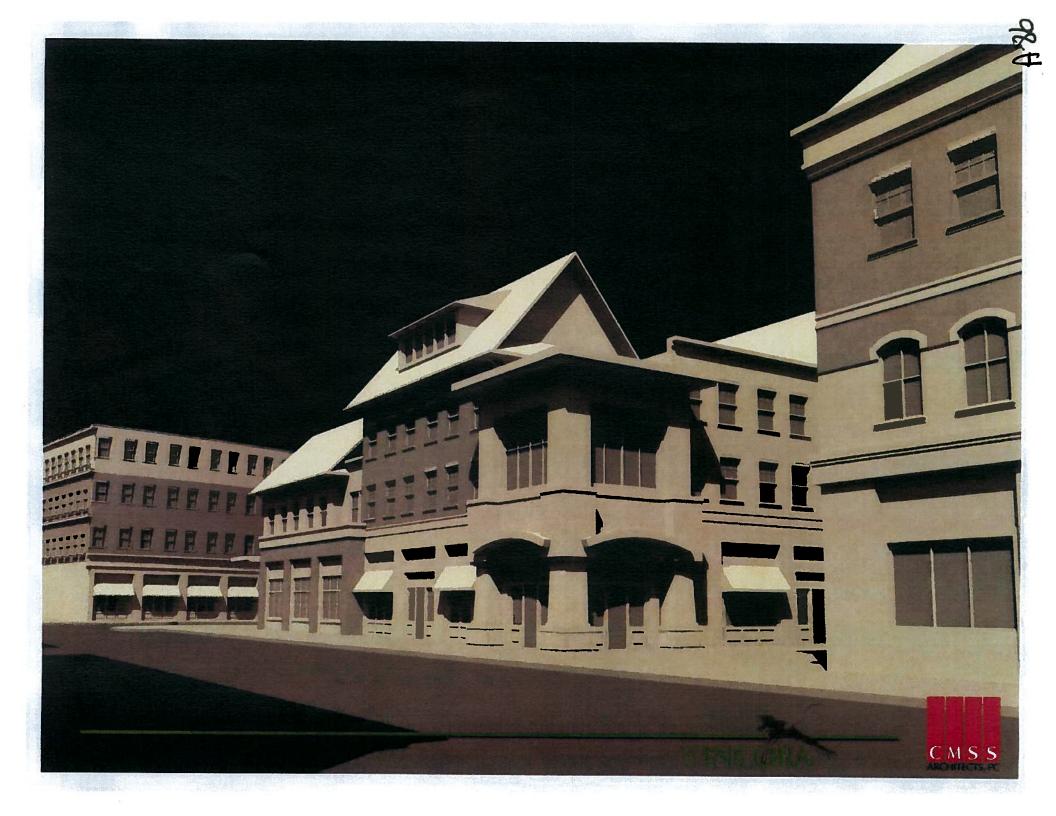


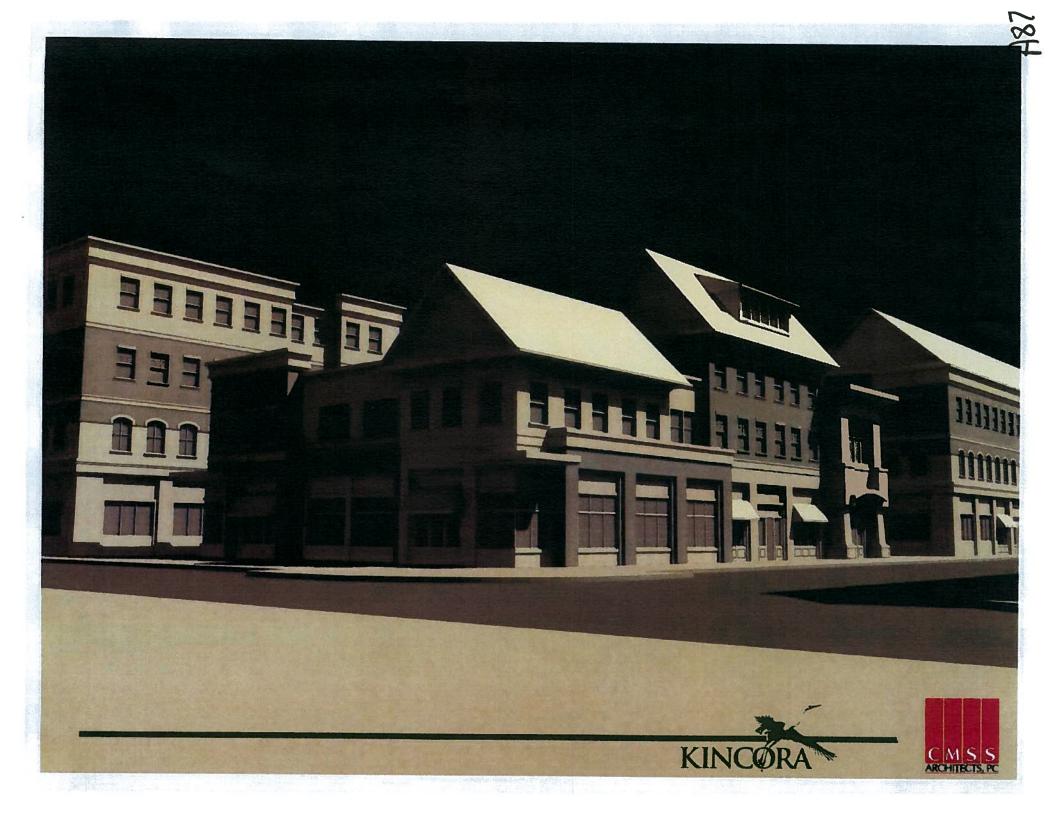
KINCORA Village Center

CMSS

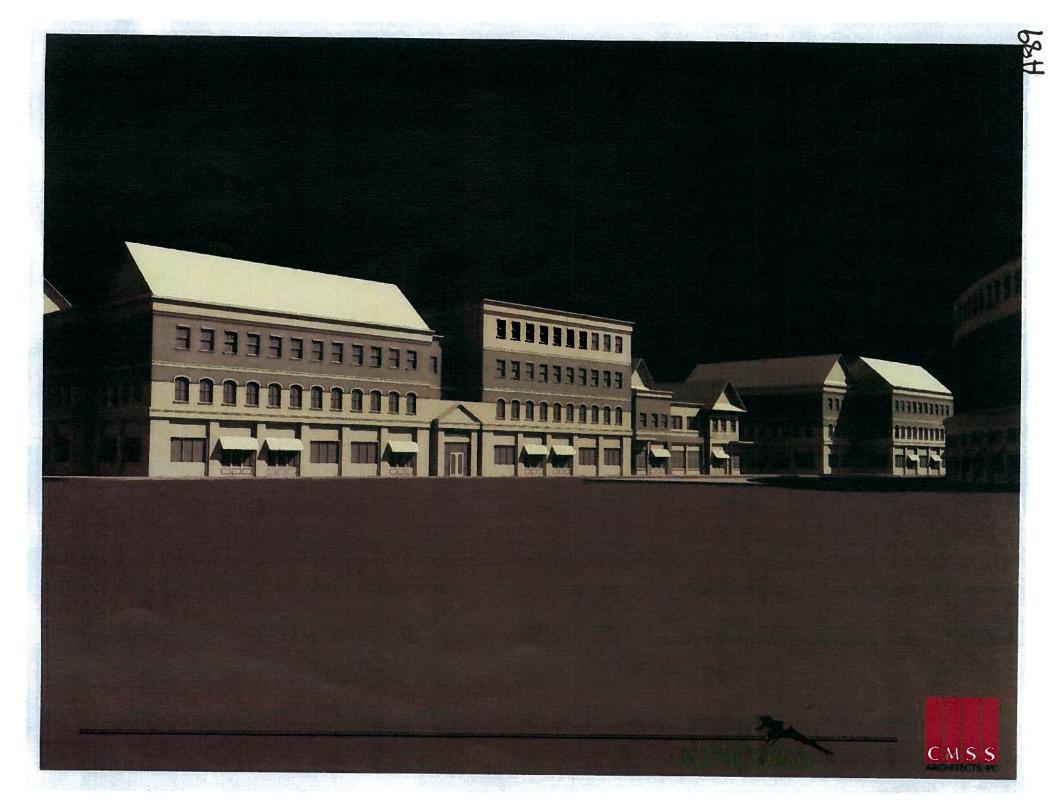












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